

The **NORTH CAROLINA REGISTER**

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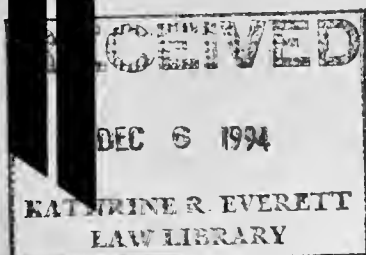
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ISSUE DATE: December 1, 1994

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
Publication Schedule
 (November 1994 - September 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing 15 days from notice	* End of Required Comment Period 30 days from notice	Last Day to Submit to RRC	** Earliest Effective Date
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95
9:21	02/01/95	01/10/95	01/18/95	02/16/95	03/03/95	03/20/95	05/01/95
9:22	02/15/95	01/25/95	02/01/95	03/02/95	03/17/95	03/20/95	05/01/95
9:23	03/01/95	02/08/95	02/15/95	03/16/95	03/31/95	04/20/95	06/01/95
9:24	03/15/95	02/22/95	03/01/95	03/30/95	04/17/95	04/20/95	06/01/95
10:1	04/03/95	03/13/95	03/20/95	04/18/95	05/03/95	05/22/95	07/01/95
10:2	04/17/95	03/24/95	03/31/95	05/02/95	05/17/95	05/22/95	07/01/95
10:3	05/01/95	04/07/95	04/17/95	05/16/95	05/31/95	06/20/95	08/01/95
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10:6	06/15/95	05/24/95	06/01/95	06/30/95	07/17/95	07/20/95	09/01/95
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10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
10:9	08/01/95	07/11/95	07/18/95	08/16/95	08/31/95	09/20/95	11/01/95
10:10	08/15/95	07/25/95	08/01/95	08/30/95	09/14/95	09/20/95	11/01/95
10:11	09/01/95	08/11/95	08/18/95	09/18/95	10/02/95	10/20/95	12/01/95
10:12	09/15/95	08/24/95	08/31/95	10/02/95	10/16/95	10/20/95	12/01/95

This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

** An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.*

*** The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st day of the next calendar month.*

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

DLP:GS:TGL:tlb
DJ 166-012-3
94-3584

October 31, 1994

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P. O. Box 1151
Raleigh, North Carolina 27602-1151

Dear Mr. Crowell:

This refers to Section 1 of Chapter 626 (1994), which provides that members of the board of education take office in July of the year following their election in Perquimans County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on August 31, 1994.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

By:

John K. Tanner
Acting Chief, Voting Section

**TITLE 10 - DEPARTMENT OF
HUMAN RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to adopt rules cited as 10 NCAC 3K .0101 - .0104.

The proposed effective date of this action is March 1, 1995.

The public hearing will be conducted at 10:00 a.m. on January 11, 1995 at the Council Building, 701 Barbour Drive, Room 201, Raleigh, NC 27603.

Reason for Proposed Action: Pursuant to Senate Bill 8 - "Self-Referrals by Health Care Providers" adopt rules to set forth criteria for health care providers to apply for exemptions where self-referrals are prohibited.

Comment Procedures: Comments may be presented in writing anytime before or at the public hearing or orally at the hearing. Please submit your written comments to Mr. Jackie Sheppard, APA Coordinator, DFS, P.O. Box 29530, Raleigh, NC 27626-0530, telephone (919) 733-2342 no later than January 11, 1995.

CHAPTER 3 - FACILITY SERVICES

**SUBCHAPTER 3K - EXEMPTIONS
FROM PROHIBITIONS OF SELF-
REFERRALS BY HEALTH CARE
PROVIDERS FOR UNDERSERVED
AREAS**

**SECTION .0100 - GENERAL
INFORMATION**

.0101 DEFINITIONS

(a) The terms defined in G.S. 90-405 shall have the same meaning in these Rules.

(b) "Commercial lender" means commercial banks, savings banks, and savings and loan organizations and all branches of any of those three categories.

(c) "Regional daily newspaper" shall mean the newspaper from the following list which has the primary circulation for the area in which the entity is located or proposed to be located:

- (1) Asheville Citizen-Times,
- (2) Charlotte Observer,
- (3) Greensboro News and Record,
- (4) Raleigh News and Observer,
- (5) Wilmington Star,
- (6) The Daily Reflector (Greenville).

Statutory Authority G.S. 90-408.

.0102 APPLICATION

(a) An application must be submitted to the Department by any health care provider wishing to be exempt from G.S. 90-406.

(b) The application shall include the following information:

- (1) the name, address, and telephone number of the health care provider applicant;
- (2) the name, address, and telephone number of the manager of the entity to which the health care provider wishes to be able to make referrals;
- (3) an explanation of the ownership of the entity to which referrals would be made including the names and ownership interests of all individuals or entities having an investment interest in the entity;
- (4) a description of the designated health care services provided or to be provided by the entity;
- (5) an analysis of the need for the health care service in the area sufficient to allow the Department to determine that the area is an underserved area for the particular service to be provided.

(c) Applications shall be sent to the Director's Office, Division of Facility Services, North Carolina Department of Human Resources, 701 Barbour Drive, P.O. Box 29530, Raleigh, N.C. 27626-0530, and shall indicate the purpose of the application.

Statutory Authority G.S. 90-408.

**.0103 CRITERIA FOR AN UNDERSERVED
AREA EXEMPTION - NEW ENTITY**

(a) In order for the Department to determine that there is a demonstrated need in the county where the entity is proposed to be located for the designated health care services to be offered by the entity the Department must conclude that:

- (1) the service or services proposed are not provided in the county and are not available within 10 miles of the pro-

- (2) posed site of the entity; or
any existing provider of the same service or services proposed by the new entity, located in the county or within 10 miles of the proposed site of the entity, is not able to provide services to all who require the service and is unwilling or unable to expand services in order to accommodate those in need of the service. The application shall provide written confirmation from the existing provider acknowledging unmet need and unwillingness or inability to accommodate it.

(b) In order for the Department to determine that alternative financing is not available for a proposed new entity the applicant shall provide either of the following:

- (1) written confirmation from at least three commercial lenders in the county that they have considered and rejected a proposal to finance on reasonable terms the proposed new entity; and
- (2) documentation that the plan of finance proposed to include health care provider participation is essentially the same as the one rejected by the commercial lenders; and
- (3) documentation that any non health care providers who are proposed to be parties to the financing, are proposed to be participating under the same terms and conditions as that proposed for the health care providers; and
- (4) documentation that an advertisement at least 3 inches wide and 3 inches long has been placed in four successive Sunday editions of a regional daily newspaper under the heading "Investment Opportunity" describing the type of investment available, and that no responses have been received within 30 days of the fourth advertisement or that interested parties have been unable or unwilling to provide financing under the same terms and conditions that are proposed for the health care provider investor.

Statutory Authority G.S. 90-408.

.0104 CRITERIA FOR AN UNDERSERVED AREA EXEMPTION - EXISTING ENTITY

- (a) In order for the Department to determine

that there is a demonstrated need in the county where the entity is located for the designated health care services offered by the entity, the Department must conclude that:

- (1) No other entity in the county is providing the service or services provided, nor is there any other entity providing such service or services within 10 miles of the existing entity; or
- (2) Any other entity located in the county or within 10 miles of the existing entity which offers the same service or services provided by the existing entity is not able to provide services to all who require the service and is unwilling or unable to expand services in order to accommodate those in need of the service. The application shall provide written confirmation from the existing provider acknowledging unmet need and unwillingness or inability to accommodate it.

(b) In order for the Department to determine that alternative financing is not available for an existing entity the applicant shall provide with its application either of the following:

- (1) documentation that an appraisal of the entity has been made and that the portion of the entity owned by the applicant has been offered for sale to other current and potential investors at a price represented by the proportionate share of the appraised value owned by the applicant seeking an exemption and that the offer has been rejected within 30 days of the date the application was submitted; and
- (2) documentation that the portion of the entity owned by the applicant seeking an exemption has been publicly offered for sale at a price represented by its appraised value, including affidavits of publication that an advertisement at least 3 inches wide and 3 inches long has appeared in four successive Sunday editions of a regional daily newspaper under the heading "Investment Opportunity" describing the type of investment available, and that no responses have been received within 30 days of the fourth advertisement or that interested parties have been unable or unwilling to purchase the portion of the entity owned by the applicant.

SECTION .0100 - COVERAGE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend rules cited as 10 NCAC 49C .0101 - .0102, .0104 - .0106, .0201, .0301 - .0302; adopt rule cited as 10 NCAC 49C .0303; and repeal rule cited as 10 NCAC 49C .0401.

The proposed effective date of this action is March 1, 1995.

The public hearing will be conducted at 10:00 a.m. on January 5, 1995 at the Albemarle Building, Room 844, 325 N. Salisbury St., Raleigh, NC 27603.

Reason for Proposed Action: APA Rules are being changed to enable North Carolina to provide services under the AFDC-EA program in addition to cash assistance.

Comment Procedures: Comments may be presented in writing anytime before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these Rules by calling or writing to Sharnese Ransome, Division of Social Services, 325 N. Salisbury St., Raleigh, NC 27603, (919) 733-3055.

Editor's Note:

10 NCAC 49C .0101 - .0102, .0104 - .0106, .0303, .0401 were filed as temporary rules effective November 7, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner. These changes are shown in italic print.

10 NCAC 49C .0101 - .0102, .0104 - .0106, .0201, .0301 - .0302 were filed as temporary rules effective January 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner. These changes are shown in bold print.

CHAPTER 49 - AID TO FAMILIES WITH
DEPENDENT CHILDREN (AFDC)

SUBCHAPTER 49C - EMERGENCY

.0101 ELIGIBILITY FOR COVERAGE

(a) Eligibility for coverage for Emergency Assistance will be as follows:

- (1) Emergency Assistance shall be provided to or on behalf of needy children under the age of 21, the specified relative of the needy children, the spouse of the specified relative and all other individuals sharing the same single unit dwelling with the exception of roomers or boarders or other individuals who occupy a separate living area within the single unit dwelling. The needy child under the age of 21 who is within the specified degree of relationship must be living with the specified relative or have lived with the specified relative within six months prior to the month in which Emergency Assistance is requested.
- (2) Families of migrant workers shall be covered if the requirements stated in Paragraph (a) of this Rule and the regulations stated in 45 CFR 233.120 are met. 45 CFR 233.120 is hereby adopted by reference ~~under G.S. 150B-14(e) including all subsequent amendments and editions. Copies of this Code of Federal Regulations may be obtained from the eighth floor of the Albemarle Building, 325 North Salisbury Street, Raleigh, N.C. 27603 (tel. # (919) 733-3055) at a cost of ten cents (\$.10) per page at the time of adoption of this Rule.~~
- (3) Individuals who are illegal aliens are not eligible for Emergency Assistance.

(b) Verification:

- (1) The **county agency** shall accept the applicant's statement to verify the household composition.
- (2) The **county agency** shall accept the applicant's statement verifying living with and kinship ~~unless questionable. If the applicant's statement is questionable, the county department of social services shall be required to verify living with and kinship according to rules in 10 NCAC 49B .0304.~~
- (3) The **county agency** shall accept the

applicant's statement regarding alien status ~~unless questionable. If the applicant's statement is questionable, the county department of social services shall be required to verify the status using documentary evidence provided by the applicant.~~

Authority G.S. 108A-39.1; 143B-153; 45 C.F.R. 233.120.

.0102 EMERGENCIES COVERED

(a) The following emergencies shall be covered:

- (1) a crisis situation resulting from a catastrophic illness;
- (2) substantial loss of shelter, food, clothing, or household furnishings due to fire, flood, or similar natural or man-made disaster, or a crime of violence;
- (3) emergency situation over which there was no control, which left the family homeless, or in immediate danger of eviction or foreclosure;
- (4) a situation in which Emergency Assistance is necessary to avoid destitution of the needy child as described in .0101 of this Subchapter, or to provide shelter for the child;
- (5) emergency situation which could lead to destitution and the destitution or need for living arrangements did not arise because a specified relative refused without good cause to accept employment or training for employment. Good cause is defined in 10 NCAC 49B .0312(f);
- (6) mass emergencies;
- (7) loss of a relative who has been responsible for support or care of one of the family members;
- (8) abuse, neglect, or dependency of children;
- (9) situation in which a child is at risk of removal from the home;
- (10) situation in which return to the home of a child who is currently separated from his family may create an emergency.

(b) ~~The county department of social services shall verify the emergency situation. Methods of verification include but are not limited to an eviction notice, contact with the landlord or other collateral, statement from a doctor, or signed statement from the applicant. The agency shall accept the applicant's statement as~~

the primary source of verification. However, agencies may examine secondary verification or contact landlords or other sources to substantiate the emergency.

Authority G.S. 108A-39.1; 143B-153; 45 C.F.R. 233.120.

.0104 BENEFIT LEVELS

(a) Cash assistance:

(1) The maximum cash assistance benefit per household is three hundred dollars (\$300) during 30 consecutive days. Assistance cannot be received again within a 12 consecutive month period.

(2) When the ~~county department~~ agency purchases in-kind goods or contracts for the purchase of services to alleviate or to prevent destitution of the family, the value of the in-kind goods or contracted services purchased with the cash assistance must be established and considered when authorizing the benefit level.

(A) For in-kind goods, the value ~~will~~ shall be the actual purchase price of the goods.

(B) For contracted services, the provider ~~will~~ shall submit to the ~~county department of social services~~ agency a written statement of the value of the service provided purchased with the cash assistance.

(b) Services:

(1) There is no maximum benefit level for services but the family must need the services to alleviate the identified emergency.

(2) Services must be authorized within a single 30 day period no less than 12 months after the beginning of the family's last EA authorization period and are limited to a maximum duration of 364 days.

Authority G.S. 108A-39.1; 143B-153; 45 C.F.R. 233.120.

.0105 TYPES OF ASSISTANCE PROVIDED

Assistance will include:

(1) Cash assistance including:

(a) temporary shelter; food and clothing;

(b) transportation;

- (3) (c) home repairs such as repair of frozen pipes and plastic covering for windows;
- (4) (d) replacement or repair, when appropriate, of necessary appliances, household items, or furniture;
- (5) (e) in-kind goods such as clothing, blankets, food;
- (6) (f) outpatient medical services such as prescriptions, eye-glasses and doctor visits if the expense is not covered by the Medicaid Program or the individual needing the care is either not receiving or is ineligible for Medical Assistance.

(2) Services including:

- (a) In Home Services, including Assessment; Case Management/Service Planning and Coordination; Counseling and Treatment Services; Family Support/Family Preservation; Day Support Services; and, Psycho-educational Services;
- (b) Out of Home Services, including Residential Placement; Care and Treatment in a Family Setting; and, Care and Treatment in a Group Setting;
- (c) Other Services, including Consultation and Education; Other Child Welfare Services; and, Transportation.

Authority G.S. 108A-39.1; 143B-153; 45 C.F.R. 233.120.

.0106 METHODS OF PAYMENT

Methods of payment include:

(1) Cash Assistance

- (1) (a) direct payment to client;
- (2) (b) voucher payment;
- (3) (c) vendor payment;
- (d) two-party payment to client and vendor.

(2) Services

- (a) payment to client for purchase of services;
- (b) direct payment to an individual or agency;
- (c) purchase of service contract.

Authority G.S. 108A-39.1; 143B-153; 45 C.F.R. 233.120.

SECTION .0200 - APPLICATION AND DISPOSITION

.0201 APPLICATION AND DISPOSITION

(a) The family shall apply for Emergency Assistance in with an agency that serves the county in which it lives.

(b) Application shall be made on a state-prescribed form.

(c) If eligible for assistance, the family shall receive benefits within 48 hours.

(d) If eligibility cannot be verified as described in this Subchapter, the application may pend beyond 48 hours.

Authority G.S. 108A-39.1; 143B-153; 45 C.F.R. 233.120.

SECTION .0300 - RESERVE AND INCOME

.0301 RESERVE

(a) A household shall be allowed to reserve total resources at a maximum of two thousand two hundred dollars (\$2,200). Included in the two thousand two hundred dollar (\$2,200) total, a household shall be allowed to reserve liquid assets at a maximum of three hundred dollars (\$300). If the total reserve owned by the household exceeds two thousand two hundred dollars (\$2,200), it shall be ineligible. If the liquid assets owned by the household exceed three hundred dollars (\$300), the household shall be ineligible regardless of the total amount of reserve. Liquid assets shall include ~~all reserve items listed in (c) of this Rule except (6), (7) and (8) Subparagraphs (1), (2), and (3) in Paragraph (c) of this Rule.~~

(b) Resources owned by members of the household applying for Emergency Assistance shall be counted.

(c) The following reserve items shall be counted:

- (1) cash on hand;
- (2) the current balance of savings accounts;
- (3) that portion of a checking account other than the monthly income deposited to meet the household's needs;
- (4) stocks, bonds, mutual fund shares, savings certificates;
- (5) revocable trust funds;
- ~~(6) life estate and remainder interest, if salable;~~
- ~~(7) net proceeds from a business, including a farm, which has been discontinued;~~
- ~~(8) (6) equity in real property not used as a home or producing an income.~~

(d) The following reserve items shall be excluded:

- (1) household or personal belongings

(includes essential and non-essential personal property);

- (2) motor vehicles;
- (3) primary residence, including mobile home, and all contiguous property;
- (4) income-producing property;
- (5) insurance (including burial, term, and whole life cash values);
- (6) value of prepaid burial contracts;
- (7) value of burial plots;
- (8) savings of a student under the age of 21 who is saving his money for school expenses;
- (9) relocation assistance payments;
- (10) that portion of monthly income deposited in a checking account to meet monthly needs;
- (11) non-salable life estate or remainder interest;
- (12) heir property, i.e., property from an estate which has not been settled;
- (13) HUD community development block grants-;
- (14) life estate and remainder interest;
- (15) net proceeds from a business, including a farm, which has been discontinued.

(e) Verification. The applicant's statement shall be accepted as verification of reserve.

- (1) ~~Unless questionable, the value of the household's reserve shall be verified by the specified relative's statement.~~
- (2) ~~If the household's resources equal or exceed two thousand two hundred dollars (\$2,200) or the specified relative's statement is questionable, resources shall be verified according to 10 NCAC 49B .0307.~~
- (3) ~~If additional verification is required, the application may pend beyond forty-eight hours.~~

Authority G.S. 108A-39.1; 143B-153; 45 C.F.R. 233.120.

.0302 INCOME

(a) Except for verification, base periods, and determination of net income, income Rules stated in 10 NCAC 49B .0308 shall control for Emergency Assistance.

(b) Base Periods: For all types of countable income, the agency shall accept the applicant's statement of the most recently received amount.

- (1) ~~For continuing earned income, the county department of social services~~

~~shall use the applicant's most recently paid wage. The county department of social services shall convert this income to a monthly amount.~~

- (2) ~~For all other income except farm income, small business, property rentals and roomer boarder income, the county department of social services shall use income actually received during the month prior to the month of application.~~
- (3) ~~For income from a farm, small business, property rental or a roomer boarder, the base period shall be the month prior to the month of application through the date of application. The county department of social services shall divide the gross income received during this period by the number of months the income covers. If income from a farm, small business, property rental or a roomer boarder is received at a time other than the base period herein described, the county department of social services shall count as reserve the amount remaining unspent as of the date of application.~~

(c) Determination of Net Income

- (1) Net earned or unearned income is the amount actually received by each applicant or ineligible alien.
- (2) ~~Net earned income, other than income from a farm, small business, property rental, or a roomer boarder, is the amount remaining after payroll deductions for Social Security (FICA), federal and state taxes, medical and hospital insurance, retirement, union dues, and any other deduction required by the employer.~~
- (3) ~~Net earned income from a farm is the amount remaining after deduction of operational expenses directly related to producing the income. These expenses include but are not limited to:~~
 - (A) ~~fertilizer, insecticides, seed, crop insurance;~~
 - (B) ~~livestock maintenance;~~
 - (C) ~~rent payments;~~
 - (D) ~~taxes;~~
 - (E) ~~building and equipment maintenance;~~
 - (F) ~~interest on debts.~~

(4) ~~Net earned income from a small business or from self-employment is the amount remaining after deduction of operational expenses directly related to producing the income. These expenses may include but are not limited to:~~

- ~~(A) taxes required to operate the business;~~
- ~~(B) licenses and permit fees;~~
- ~~(C) rent payments;~~
- ~~(D) insurance;~~
- ~~(E) labor costs;~~
- ~~(F) maintenance;~~
- ~~(G) products required to operate the business;~~
- ~~(H) interest on debts;~~
- ~~(I) food costs for self-employed babysitters.~~

(5) ~~Net earned income from property rental is the amount remaining after deduction of operational expenses directly related to producing the income. These expenses may include but are not limited to:~~

- ~~(A) interest on debts;~~
- ~~(B) taxes;~~
- ~~(C) insurance;~~
- ~~(D) maintenance;~~
- ~~(E) utilities;~~
- ~~(F) labor costs;~~
- ~~(G) real estate agent's fees.~~

(6) ~~Net earned income from a roomer boarder is the amount remaining after deduction of the cost of food directly related to producing the income.~~

(7) (2) ~~Net earned income of an illegal alien, as defined in this Rule, minus his needs, shall be counted.~~

(d) ~~Verification~~ (1) ~~The county department of social services agency shall accept the applicant's statement as verification of income. use any resources available at the county department to verify income of the family. These resources may include but are not limited to other public assistance case records of the family, income listings such as the State Data Exchange, Bendex, or Unemployment Insurance and Wage Files which are available both on paper listing and on-line in the State's Eligibility Information System.~~

(2) ~~If records are unavailable at the county department of social services for verifying income, county depart-~~

~~ments of social services shall accept wage stubs or a written statement from the employer. If the county department of social services is unable to obtain wage stubs or a written statement from the employer, it shall accept the specified relative's written statement of each household member's income, unless questionable.~~

(3) ~~if no verification is available and the specified relative's statement is questionable, the county department of social services shall be required to verify income according to the Rules in 10 NCAC 49B .0308(g).~~

(4) ~~If additional verification is required, the application may pend beyond 48 hours.~~

Authority G.S. 108A-39.1; 143B-153; 45 C.F.R. 233.120.

.0303 RESERVE AND INCOME FOR SERVICES

To be eligible for Emergency Assistance, the applicant family must be without income or resources needed to pay for services to alleviate the emergency. The agency shall accept the applicant's statement as verification that he does not have the income or resources needed to pay for the services needed to alleviate the emergency.

Authority G.S. 108A-39.1; 143B-153; 45 C.F.R. 233.120.

SECTION .0400 - SERVICES

.0401 SERVICES PROVIDED

The county shall provide the following services to help meet needs attributable to the emergency:

- (1) ~~information regarding community services available;~~
- (2) ~~referral to other agencies where appropriate, including referral to the local Child Support Enforcement Agency;~~
- (3) ~~other services as stated in the county's Social Services Plan.~~

Authority G.S. 108A-39.1; 143B-153; 45 C.F.R. 233.120.

**TITLE 15A - DEPARTMENT OF
ENVIRONMENT, HEALTH, AND
NATURAL RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNH - Environmental Management Commission intends to amend rules cited as 15A NCAC 2B .0101, .0103, .0201 - .0202; 2H .0502 - .0504, .0507; adopt 2B .0220; 2H .0501, .0506; and repeal 2B .0109.

The proposed effective date of this action is August 1, 1995.

The public hearing will be conducted at 7:00 p.m. on:

*Monday, January 9, 1995
Groundfloor Hearing Room
Archdale Building
512 North Salisbury Street
Raleigh, NC*

*Wednesday, January 11, 1995
Humanities Lecture Hall
UNC - Asheville
Asheville, NC*

*Thursday, January 12, 1995
Medlin Campus Center, Level One
Guilford Technical Community College
Jamestown, NC*

*Wednesday, January 18, 1995
Francis Speight Auditorium
Jenkins Fine Arts Center
East Carolina University
Greenville, NC*

*Thursday, January 19, 1995
Bryan Auditorium, Morton Hall
UNC - Wilmington
Wilmington, NC*

Reason for Proposed Action: *The proposed rules and amendments clarify that wetlands are waters of the state, define wetlands, designate uses for wetlands, establish narrative criteria to protect the designated uses of wetlands and clarify that the antidegradation policy applies to wetlands. The rules also provide greater detail on the procedures used to review requests for 401 Water Quality*

Certifications. Wetlands are incorporated into the freshwater, tidal salt water and supplemental classifications for waters of the state by amendments to 15A NCAC 2B .0101. Amendments to 15A NCAC 2B .0201 clarify that the anti-degradation policy applies to wetlands. The definition of wetlands and other definitions pertaining to wetlands are found in amendments to 15A NCAC 2B .0202. Wetland uses and the narrative criteria to protect the designated uses are proposed at 15A NCAC 2B .0220. The 401 Water Quality Certification review procedures, which are used to evaluate requests to discharge fill material into waters and wetlands, are incorporated into rules by the proposed rules and amendments found at 15A NCAC 2B .0501, .0502, .0503, .0504, .0506 and .0507. These proposed rules and amendments are intended to protect water quality through the protection of those wetlands that perform valuable water quality functions such as water storage and nutrient and pollutant removal. These wetlands also provide habitat for fish propagation and wildlife, and recreational and educational opportunities. Incorporation of the 401 Water Quality Certification review procedures into rules will inform the public of these procedures and increase the ability of the public to avoid and minimize impacts to waters and wetlands that are performing important functions. Codification of these procedures will also result in an increase in the effectiveness and efficiency of the water quality certification process.

Comment Procedures: *Comments, statements, data and other information may be submitted in writing prior to, during or within 30 days after the date of the final hearing (February 20, 1995) or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. Copies of the proposed rules and information package may be obtained by contacting the Water Quality Planning Branch at (919)733-5083, ext. 558 or 560. Written comments may be submitted to Ron Ferrell, Division of Environmental Management, Water Quality Section, P.O. Box 29535, Raleigh, NC 27626-0535.*

These Rules affect the expenditures or revenues of local funds. *A fiscal note was submitted to the Fiscal Research Division on November 10, 1994, OSBM on October 13, 1994, N.C. League of Municipalities on November 10, 1994, and N.C.*

Association of County Commissioners on November 10, 1994.

CHAPTER 2 - ENVIRONMENTAL
MANAGEMENT

SUBCHAPTER 2B - SURFACE
WATER AND WETLAND STANDARDS

SECTION .0100 - PROCEDURES FOR
ASSIGNMENT OF WATER
QUALITY STANDARDS

.0101 GENERAL PROCEDURES

(a) The ~~rules~~ Rules contained in Sections .0100, .0200 and .0300 of this Subchapter which pertain to the series of classifications and water quality standards shall be known as the "Classifications and Water Quality Standards Applicable to the Surface Waters and Wetlands of North Carolina."

(b) The Environmental Management Commission, prior to classifying and assigning standards of water quality to any waters of the state, will proceed as follows:

- (1) The Commission, or its designee, will determine waters to be studied for the purpose of classification and assignment of water quality standards on the basis of user requests, petitions, or the identification of existing or attainable water uses, as defined by 15A NCAC 2B .0202, not presently included in the water classification.
- (2) After appropriate studies of the identified waters to obtain the data and information required for determining the proper classification of the waters or segments of water are completed, the Commission, or its designee, will make a decision on whether to initiate proceedings to modify the classifications and water quality standards of identified waters. In the case of the Commission's designee deciding to initiate said proceedings, the designee will inform the Commission of the decision prior to scheduling a public hearing.
- (3) In the case of a petition for classification and assignment of water quality standards according to the requirements of General Statute 150B-20, the Director will make a preliminary recommendation on the appropriate classifications and water quality standards of the

identified waters on the basis of the study findings or information included in the petition supporting the classification and standards changes.

- (4) The Commission will make a decision on whether to grant or deny a petition in accordance with the provisions of General Statute 150B-20 based on the information included in the petition and the recommendation of the Director. The Commission may deny the petition and request that the Division study the appropriate classifications and water quality standards for the petitioned waters in accordance with Subparagraph (b)(2) of this Rule.
- (5) The Director will give due notice of such hearing or hearings in accordance with the requirements of General Statute 143-214.1 and G.S. 150B, and will appoint a hearing officer(s) in consultation with the chairman of the Commission.
- (6) The hearing officer(s) will, as soon as practicable after the completion of the hearing, submit a complete report of the proceedings of the hearing to the Commission. The hearing officer(s) shall include in the report a transcript or summary of testimony presented at such public hearing, relevant exhibits, a summary of relevant information from the stream studies conducted by the technical staff of the Commission, and final recommendations as to classification of the designated waters and the standards of water quality and best management practices which should be applied to the classifications recommended.
- (7) The Commission, after due consideration of the hearing records and the final recommendations of the hearing officer(s), will adopt its final action with respect to the assignment of classifications, and any applicable standards or best management practices applicable to the waters under consideration. The Commission will publish such action, together with the effective date for the application of the provisions of General Statute 143-215.1 and 143-215.2, as amended, as a part of the Commission's official rules.
- (8) The final action of the ~~commission~~

Commission with respect to the assignment of classification with its accompanying standards and best management practices shall contain the Commission's conclusions relative to the various factors given in General Statute 143-214.1(d), and shall specifically include the class or classes to which such specifically designated waters in the watershed or watersheds shall be assigned on the basis of best usage in the interest of the public.

(c) Freshwater Classifications.

- (1) Class C; freshwaters protected for secondary recreation, fishing, aquatic life including propagation and survival, and wildlife; all freshwaters are classified to protect these uses at a minimum;
- (2) Class B; freshwaters protected for primary recreation which includes swimming on a frequent or organized basis and all Class C uses;
- (3) Class WS-I; waters protected as water supplies which are essentially in natural and undeveloped watersheds; point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter; local programs to control nonpoint sources and stormwater discharges of pollution are required; suitable for all Class C uses;
- (4) Class WS-II; waters protected as water supplies which are generally in predominantly undeveloped watersheds; point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter; local programs to control nonpoint sources and stormwater discharges of pollution are required; suitable for all Class C uses;
- (5) Class WS-III; waters protected as water supplies which are generally in low to moderately developed watersheds; point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter; local programs to control nonpoint sources and stormwater discharges of pollution are required; suitable for all Class C uses;
- (6) Class WS-IV; waters protected as water supplies which are generally in

moderately to highly developed watersheds; point source discharges of treated wastewater are permitted pursuant to Rules .0104 and .0211 of this Subchapter; local programs to control nonpoint sources and stormwater discharges of pollution are required; suitable for all Class C uses; Class WS-V; waters protected as water supplies which are generally upstream of and draining to Class-IV waters; no categorical restrictions on watershed development or treated wastewater discharges are required; however, the Commission or its designee may apply appropriate management requirements as deemed necessary for the protection of downstream receiving waters (15A NCAC 2B .0203); suitable for all Class C uses-;

(7)

- (8) Class WL; waters that meet the definition of wetlands found in 15A NCAC 2B .0202 except those designated as Class SWL.

(d) Tidal Salt Water Classifications.

- (1) Class SC; saltwaters protected for secondary recreation, fishing, aquatic life including propagation and survival, and wildlife; all saltwaters are classified to protect these uses at a minimum;
- (2) Class SB; saltwaters protected for primary recreation which includes swimming on a frequent or organized basis and all Class SC uses;
- (3) Class SA; suitable for commercial shellfishing and all other tidal saltwater uses-;
- (4) Class SWL; waters that meet the definition of coastal wetlands as defined by G.S. 113-229(n)(3), and which are landward of the mean high water line, and wetlands contiguous to estuarine waters as defined by G.S. 113A-113(b)(2).

(e) Supplemental Classifications.

- (1) Trout waters (Tr); freshwaters protected for natural trout propagation and survival of stocked trout;
- (2) Swamp waters (Sw); waters which have low velocities and other natural characteristics which are different from adjacent streams;
- (3) Nutrient Sensitive Waters (NSW); waters subject to growths of microscopic or macroscopic vegetation

- (4) requiring limitations on nutrient inputs; Outstanding Resource Waters (ORW); unique and special waters of exceptional state or national recreational or ecological significance which require special protection to maintain existing uses;
- (5) High Quality Waters (HQW); waters which are rated as excellent based on biological and physical/chemical characteristics through Division monitoring or special studies, native and special native trout waters (and their tributaries) designated by the Wildlife Resources Commission, primary nursery areas (PNA) designated by the Marine Fisheries Commission and other functional nursery areas designated by the Wildlife Resources Commission, critical habitat areas designated by the Wildlife Resources Commission or the Department of Agriculture, all water supply watersheds which are either classified as WS-I or WS-II or those for which a formal petition for reclassification as WS-I or WS-II has been received from the appropriate local government and accepted by the Division of Environmental Management and all Class SA waters-;
- (6) Unique wetland (UWL); wetlands of exceptional state or national ecological significance which require special protection to maintain existing uses. These wetlands could include but are not limited to wetlands contiguous to waters designated as ORW, and wetlands that have been documented to the satisfaction of the Commission as habitat essential for the continued existence of state or federally listed threatened or endangered species.

(f) In determining the best usage of waters and assigning classifications of such waters, the Commission will consider the criteria specified in General Statute 143-214.1(d) and all existing uses as defined by 15A NCAC 2B .0202. In determining whether to revise a designated best usage for waters through a revision to the classifications, the Commission will follow the requirements of 40 CFR 131.10(b),(c),(d) and (g) which are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection

at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Water Quality Planning Branch, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325 at a cost of thirteen dollars (\$13.00).

(g) When revising the classification of waters, the Division will collect water quality data within the watershed for those substances which require more stringent control than required by the existing classification. However, such sampling may be limited to only those parameters which are of concern. If the revision to classifications involves the removal of a designated use, the Division will conduct a use attainability study as required by the provisions of 40 CFR 131.10(j) which are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Water Quality Planning Branch, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325 at a cost of thirteen dollars (\$13.00).

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1).

.0103 ANALYTICAL PROCEDURES

(a) Chemical/Physical Procedures. Tests or analytical procedures to determine conformity or non-conformity with standards will, insofar as practicable and applicable, conform to the guidelines by the Environmental Protection Agency codified as 40 CFR, Part 136, which are hereby incorporated by reference including any subsequent amendments and editions or such other methods as may be approved by the Director. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Water Quality Planning Branch, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325 at a cost of thirteen dollars (\$13.00).

(b) Biological Procedures. Biological tests to determine conformity or non-conformity with standards will be based on methods published by

the U.S. Environmental Protection Agency as outlined in "Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms, Fourth Edition" (1991; Report No. EPA/600/4-90/027) or subsequent versions, "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms, Second Edition" (1989; Report No. EPA/600/4-89/001) or subsequent versions, and "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms" (Report No. EPA/600/4-87/028) or subsequent versions, or methods published by the North Carolina Department of Environment, Health, and Natural Resources, as outlined in "Standard Operating Procedures: Biological Monitoring" (1990; Division of Environmental Management, Water Quality Section) or subsequent versions, or such other methods as approved by the Director.

(c) Wetland Evaluation Procedures. Evaluations of wetlands for the presence of existing uses will be based on methods or guidance approved by the Director and published by the North Carolina Department of Environment, Health, and Natural Resources as outlined in "North Carolina Division of Environmental Management Wetland Rating System" or subsequent versions. Copies of the NCDEM Wetland Rating System may be obtained by submitting a written request to NCDEM, Water Quality Section, P.O. Box 29535, Raleigh, NC 27626-0535. Other methods must be approved by the Director.

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1).

**.0109 WATERS AFFECTED BY
DREDGE AND FILL ACTIVITIES**

~~Projects that alter the reach and extent of a freshwater wetland will not be considered as removing existing uses of the wetland in violation of the Antidegradation Policy [pursuant to 15A NCAC 2B .0201(b)] if the alteration protects all existing and designated uses of all waters of the state. In making this determination, the Director will be guided by 40 CFR Part 230, Subparts A through F.~~

Statutory Authority G.S. 143-214.1.

**SECTION .0200 - CLASSIFICATIONS
AND WATER QUALITY STANDARDS
APPLICABLE TO SURFACE WATERS
AND WETLANDS OF NORTH CAROLINA**

.0201 ANTIDegradATION POLICY

(a) It is the policy of the Environmental Management Commission to maintain, protect, and enhance water quality within the State of North Carolina. Pursuant to this policy, the requirements of 40 CFR 131.12 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, Water Quality Planning Branch, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the U.S. Government Printing Office, Superintendent of Documents, Washington, DC 20402-9325 at a cost of thirteen dollars (\$13.00). These requirements will be implemented in North Carolina as set forth in Paragraphs (b), (c) ~~and~~ (d), (e) ~~and~~ (f) of this Rule.

(b) Existing uses, as defined by Rule .0202 of this Section, and the water quality to protect such uses shall be protected by properly classifying surface waters and having standards sufficient to protect these uses. In cases where the Commission or its designee determines that an existing use is not included in the classification of waters, a project which will affect these waters will not be permitted unless the existing uses are protected.

(c) The Commission shall consider the present and anticipated usage of waters with quality higher than the standards, including any uses not specified by the assigned classification (such as outstanding national resource waters or waters of exceptional water quality) and will not allow degradation of the quality of waters with quality higher than the standards below the water quality necessary to maintain existing and anticipated uses of those waters. Waters with quality higher than the standards are defined by Rule .0202 of this Section. The following procedures will be implemented in order to meet these requirements:

- (1) Each applicant for an NPDES permit or NPDES permit expansion to discharge treated waste will document an effort to consider non-discharge alternatives pursuant to 15A NCAC 2H .0105(c)(2).
- (2) Public Notices for NPDES permits will list parameters that would be water quality limited and state whether or not the discharge will use the entire available load capacity of the receiving waters and may cause more stringent water quality based effluent limitations to be established for dischargers

downstream.

- (3) The Division may require supplemental documentation from the affected local government that a proposed project or parts of the project are necessary for important economic and social development.
- (4) The Commission and Division will work with local governments on a voluntary basis to identify and develop appropriate management strategies or classifications for waters with unused pollutant loading capacity to accommodate future economic growth.

Waters with quality higher than the standards will be identified by the Division on a case-by-case basis through the NPDES permitting and waste load allocation processes (pursuant to the provisions of 15A NCAC 2H .0100). Dischargers affected by the requirements of Paragraphs (c)(1) through (c)(4) of this Rule and the public at large will be notified according to the provisions described herein, and all other appropriate provisions pursuant to 15A NCAC 2H .0109. If an applicant objects to the requirements to protect waters with quality higher than the standards and believes degradation is necessary to accommodate important social and economic development, the applicant can contest these requirements according to the provisions of General Statute 143-215.1(e) and 150B-23.

(d) The Commission shall consider the present and anticipated usage of High Quality Waters (HQW), including any uses not specified by the assigned classification (such as outstanding national resource waters or waters of exceptional water quality) and will not allow degradation of the quality of High Quality Waters below the water quality necessary to maintain existing and anticipated uses of those waters. High Quality Waters are a subset of waters with quality higher than the standards and are as described by 15A NCAC 2B .0101(e)(5). The following procedures will be implemented in order to meet the requirements of this part:

- (1) New or expanded wastewater discharges in High Quality Waters will comply with the following:
 - (A) Discharges from new single family residences will be prohibited. Those that must discharge will install a septic tank, dual or recirculating sand filters, disinfection and step aeration.
 - (B) All new NPDES wastewater discharges (except single family

residences) will be required to provide the treatment described below:

- (i) Oxygen Consuming Wastes: Effluent limitations will be as follows: $BOD_5 = 5 \text{ mg/l}$, $NH_3\text{-N} = 2 \text{ mg/l}$ and $DO = 6 \text{ mg/l}$. More stringent limitations will be set, if necessary, to ensure that the cumulative pollutant discharge of oxygen-consuming wastes will not cause the DO of the receiving water to drop more than 0.5 mg/l below background levels, and in no case below the standard. Where background information is not readily available, evaluations will assume a percent saturation determined by staff to be generally applicable to that hydroenvironment.
- (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) will be limited to effluent concentrations of 10 mg/l for trout waters and PNA's, and to 20 mg/l for all other High Quality Waters.
- (iii) Disinfection: Alternative methods to chlorination will be required for discharges to trout streams, except that single family residences may use chlorination if other options are not economically feasible. Domestic discharges are prohibited to SA waters.
- (iv) Emergency Requirements: Failsafe treatment designs will be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs.
- (v) Volume: The total volume of treated wastewater for all discharges combined will not exceed 50 percent of the total instream flow under 7Q10 conditions.
- (vi) Nutrients: Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations will be set for phosphorus or nitrogen, or both.
- (vii) Toxic substances: In cases where

complex wastes (those containing or potentially containing toxicants) may be present in a discharge, a safety factor will be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent will be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity will be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under design conditions. In all instances there may be no acute toxicity in an effluent concentration of 90 percent as measured by the North Carolina "Pass/Fail Methodology for Determining Acute Toxicity in a Single Effluent Concentration". Ammonia toxicity will be evaluated according to EPA guidelines promulgated in the Ammonia Criteria Development Document (1986); EPA document number 440/5-85-001; NTIS number PB85-227114; July 29, 1985 (50 FR 30784).

- (C) All expanded NPDES wastewater discharges in High Quality Waters will be required to provide the treatment described in part (1)(B) of this Rule, except for those existing discharges which expand with no increase in permitted pollutant loading.
- (2) Development activities which require an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or local erosion and sedimentation control program approved in accordance with 15A NCAC 4B .0218, and which drain to and are within one mile of High Quality Waters (HQW) will be required to control runoff from the one inch design storm as follows:
 - (A) Low Density Option: Developments which limit single family developments to one acre lots and other type developments to 12 percent built-upon area, have no stormwater

collection system as defined in 15A NCAC 2H .1002(13), and have built-upon areas at least 30 feet from surface waters will be deemed to comply with this requirement, unless it is determined that additional runoff control measures are required to protect the water quality of High Quality Waters necessary to maintain existing and anticipated uses of those waters, in which case more stringent stormwater runoff control measures may be required on a case-by-case basis. Activities conforming to the requirements described in 15A NCAC 2H .1003(a) [except for Subparagraphs (2) and (3) which apply only to waters within the 20 coastal counties as defined in 15A NCAC 2H .1002(9)] will also be deemed to comply with this requirement, except as provided in the preceding sentence.

- (B) High Density Option: Higher density developments will be allowed if stormwater control systems utilizing wet detention ponds as described in 15A NCAC 2H .1003(i), (k) and (l) are installed, operated and maintained which control the runoff from all built-upon areas generated from one inch of rainfall, unless it is determined that additional runoff control measures are required to protect the water quality of High Quality Waters necessary to maintain existing and anticipated uses of those waters, in which case more stringent stormwater runoff control measures may be required on a case-by-case basis. The size of the control system must take into account the runoff from any pervious surfaces draining to the system.
- (C) All waters classified WS-I or WS-II and all waters located in the 20 coastal counties as defined in Rule 15A NCAC 2H .1002(9) are excluded from this requirement since they already have requirements for nonpoint source controls.

If an applicant objects to the requirements to protect high quality waters and believes degradation is necessary to accommodate important social and economic development, the applicant

can contest these requirements according to the provisions of G.S. 143-215.1(e) and 150B-23.

(e) Outstanding Resource Waters (ORW) are a special subset of High Quality Waters with unique and special characteristics as described in Rule .0216 of this Section. The water quality of waters classified as ORW shall be maintained such that existing uses, including the outstanding resource values of said Outstanding Resource Waters, will be maintained and protected.

(f) Activities regulated under Section 404 of the Clean Water Act (33 U.S.C. 1344) which require a water quality certification as described in Section 401 of the Clean Water Act (33 U.S.C. 1341) shall be evaluated according to the procedures outlined in 15A NCAC 2H .0500. The evaluation of permits issued pursuant to G.S. 143-215.1 that involve the assimilation of wastewater or stormwater by wetlands will incorporate the criteria found in 15A NCAC 2H .0506(c)(1)-(5) in determining the potential impact of the proposed activity on the existing uses of the wetland per 15A NCAC 2H .0220.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

.0202 DEFINITIONS

The definition of any word or phrase used in these ~~rules~~ Rules shall be the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina. The following words and phrases, which are not defined in this article, will be interpreted as follows:

(1) Acute toxicity to aquatic life means lethality or other harmful effects sustained by either resident aquatic populations or indicator species used as test organisms in a controlled toxicity test due to a short-term exposure (relative to the life cycle of the organism) to a specific chemical or mixture of chemicals (as in an effluent). Short-term exposure for acute tests is generally 96 hours or less. Acute toxicity will be determined using the following procedures:

(a) for specific chemical constituents or compounds, acceptable levels will be equivalent to a concentration of one-half or less of the Final Acute Value (FAV) as determined according to "Guidelines for Deriving Numerical Water Quality Criteria for the Protection of Aquatic Life and its Uses" published by the Environmental

Protection Agency and referenced in the Federal Register (50 FR 30784, July 29, 1985).

(b) for specific chemical constituents or compounds for which values described under Subparagraph (1)(a) of this Rule can not be determined, acceptable levels will be equivalent to a concentration of one-third or less of the lowest available LC50 value.

(c) for effluents, acceptable levels are defined as no statistically measurable lethality (99 percent confidence level using Students t test) during a specified exposure period. Concentrations of exposure will be determined on a case-by-case basis.

(d) in instances where detailed dose response data indicate that levels of acute toxicity are significantly different from those defined in this Rule, the Director may determine on a case-by-case basis an alternate acceptable level through statistical analyses of the dose response curve.

(2) Acute to Chronic Ratio (ACR) means the ratio of acute toxicity expressed as an LC50 for a specific toxicant or an effluent to the chronic value for the same toxicant or effluent.

(3) Agricultural uses include the use of waters for stock watering, irrigation, and other farm purposes.

(4) Approved treatment, as applied to water supplies, means treatment accepted as satisfactory by the Division of Environmental Health or Division of Environmental Management.

(5) Average (except bacterial) means arithmetical average and includes the analytical results of all samples taken during the specified period; all sampling shall be done as to obtain the most representative sample under prevailing conditions:

(a) Daily Average for dissolved oxygen, shall be of at least four samples;

(b) Weekly Average means the average of all daily composite samples obtained during the calendar week; if only one grab sample is taken each day, the weekly average is the average of all daily grab samples; a minimum of three daily grab samples is needed to calculate a weekly average;

- (c) Monthly Average means the average of all daily composites (or grab samples if only one per day) obtained during the calendar month.

The definitions in this Paragraph do not affect the monitoring requirements for NPDES permits but rather are to be used by the Division along with other methodologies in determining violations of water quality standards. Arithmetical averages as defined by this Rule, and not confidence limits nor other statistical descriptions, will be used in all calculations of limitations which require the use of averages pursuant to this Rule and 40 CFR 122.41(l)(4)(iii).

- (6) Best Management Practice (BMP) means a structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.
- (7) Best usage of waters as specified for each class means those uses as determined by the Environmental Management Commission in accordance with the provisions of Article 21, Chapter 143-214.1, General Statutes of North Carolina.
- (8) Bioaccumulation factor (BAF) is a unitless value that describes the degree to which substances are taken up or accumulated into tissues of aquatic organisms from water directly and from food or other ingested materials containing the accumulated substances, and is usually measured as a ratio of a substance's concentration in tissue versus its concentration in water in situations where exposure to the substance is occurring from both water and the food chain.
- (9) Bioconcentration factor (BCF) is a unitless value that describes the degree to which substances are absorbed or concentrated into tissues of aquatic organisms from water directly and is usually measured as a ratio of substance's concentration in tissue versus its concentration in water in situations where exposure to the substance is occurring from water only.
- (10) Biological integrity means the ability of an aquatic ecosystem to support and maintain a balanced and indigenous community of organisms having species

composition, diversity, population densities and functional organization similar to that of reference conditions.

- (11) Buffer means a natural or vegetated area through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.
- (12) Built-upon area means that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel roads, recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)
- (13) Chronic toxicity to aquatic life means any harmful effect sustained by either resident aquatic populations or indicator species used as test organisms in a controlled toxicity test due to long-term exposure (relative to the life cycle of the organism) or exposure during a substantial portion of the duration of a sensitive period of the life cycle to a specific chemical substance or mixture of chemicals (as in an effluent). In absence of extended periods of exposure, early life stage or reproductive toxicity tests may be used to define chronic impacts.
- (14) Chronic value for aquatic life means the geometric mean of two concentrations identified in a controlled toxicity test as the No Observable Effect Concentration (NOEC) and the Lowest Observable Effect Concentration (LOEC).
- (15) Concentrations are the mass of a substance per volume of water and for the purposes of this Section will be expressed as milligrams per liter (mg/l), micrograms per liter (ug/l), or nanograms per liter (ng/l).
- (16) Contiguous refers to those wetlands landward of the mean high water line or normal water level and within 575 feet of classified surface waters which appear as solid blue lines on the most recently published versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps.
- (17) Critical area means the area adjacent

to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either 1/2 mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or 1/2 mile upstream from and draining to the intake (or other appropriate downstream location associated with the water supply) located directly in the stream or river (run-of-the-river), or to the ridge line of the watershed (whichever comes first). Since WS-I watersheds are essentially undeveloped, establishment of a critical area is not required. Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of 1/2 mile. The Commission may adopt a different critical area size during the reclassification process.

- (18) ~~(17)~~Critical habitat areas are defined for the purposes of the rules of this Section as those waters which are considered to be essential for the continued existence of an endangered or threatened species, and which are so designated by the NC Wildlife Resources Commission for animals or the NC Department of Agriculture for plants.
- (19) ~~(18)~~Designated Nonpoint Source Agency means those agencies specified by the Governor in the North Carolina Nonpoint Source Management Program, as approved by the Environmental Protection Agency.
- (20) ~~(19)~~Development means any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.
- (21) ~~(20)~~Discharge is the addition of any man-induced waste effluent either directly or indirectly to state surface waters.
- (22) ~~(21)~~Division means the Division of Environmental Management or its successors.
- (23) ~~(22)~~Domestic wastewater discharge

means the discharge of sewage, non-process industrial wastewater, other domestic wastewater or any combination of these items. Unless excepted by the Director, domestic wastewater includes liquid waste generated by domestic water using fixtures and appliances, from any residence, place of business, or place of public assembly even if it contains no sewage. Examples of domestic wastewater include once-through non-contact cooling water, seafood packing facility discharges and wastewater from restaurants.

- (24) ~~(23)~~Effluent channel means a discernable confined and discrete conveyance which is used for transporting treated wastewater to a receiving stream or other body of water as provided in Rule .0215 of this Section.
- (25) ~~(24)~~Existing development, for the purposes of these Rules, shall be defined as those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of the local government water supply ordinance, or such earlier time that an affected local government's management plans and ordinances shall specify, based on at least one of the following criteria:
 - (a) substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
 - (b) having an outstanding valid building permit in compliance with G.S. 153A-344.1 or G.S. 160A-385.1, or
 - (c) having expended substantial resources (time, labor, money) and having an approved site specific or phased development plan in compliance with G.S. 153A-344.1 or G.S. 160A-385.1.
- (26) ~~(25)~~Existing uses mean uses actually attained in the water body, in a significant and not incidental manner, on or after November 28, 1975, whether or not they are included in the water quality standards, which either have been actually available to the public or are uses deemed attainable by the Environmental Management Commission. At a minimum, uses shall be deemed

attainable if they can be achieved by the imposition of effluent limits and cost-effective and reasonable best management practices (BMPs) for nonpoint source control.

(27) (26)Fishing means the taking of fish by sport or commercial methods as well as the consumption of fish or shellfish or the propagation of fish and such other aquatic life as is necessary to provide a suitable environment for fish.

(28) (27)Freshwater means all waters that under natural conditions would have a chloride ion content of 500 mg/l or less.

(29) (28)Hazardous material means any substance listed as such in: Superfund Amendments and Reauthorization Act (SARA) Section 302 Extremely Hazardous Substances (42 USC 11000 et seq.), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Hazardous Substances (42 USC 9601 et seq.) or Section 311 of the Clean Water Act (CWA), as amended (33 USC 1251 et seq.; oil and hazardous substances) hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Management, 512 North Salisbury Street, Raleigh, North Carolina. Copies of SARA and CERCLA may be obtained as a single package from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325 at a cost of one hundred and one dollars (\$101.00). Copies of CWA may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9325 at a cost of fifty dollars (\$50.00).

(30) (29)Industrial discharge means the discharge of industrial process treated wastewater or wastewater other than sewage and includes:

- (a) wastewater resulting from any process of industry or manufacture, or from the development of any natural resource;
- (b) wastewater resulting from processes of trade or business, including wastewater from laundromats and car washes, but not wastewater from restaurants;

(c) stormwater will not be considered to be an industrial wastewater unless it is contaminated with industrial wastewater; or

(d) wastewater discharged from a municipal wastewater treatment plant requiring a pretreatment program.

(31) (30)LC50 means that concentration of a toxic substance which is lethal (or immobilizing, if appropriate) to 50 percent of the organisms tested during a specified exposure period. The LC50 concentration for toxic materials shall be determined for sensitive species as defined by Subparagraph (43) of this Rule under aquatic conditions characteristic of the receiving waters.

(32) (31)Local government means a city or county in singular or plural as defined in G.S. 160A-1(2) and G.S. 158A-10.

(33) (32)Lower piedmont and coastal plain waters mean those waters of the Catawba River Basin below Lookout Shoals Dam; the Yadkin River Basin below the junction of the Forsyth, Yadkin, and Davie County lines; and all of the waters of Cape Fear, Lumber, Roanoke, Neuse, Tar-Pamlico, Chowan, Pasquotank, and White Oak River Basins; except tidal salt waters which are assigned S classifications.

(34) (33)MF is an abbreviation for the membrane filter procedure for bacteriological analysis.

(35) (34)Mixing zone means a region of the receiving water in the vicinity of a discharge within which dispersion and dilution of constituents in the discharge occurs and such zones shall be subject to conditions established in accordance with 15A NCAC 2B .0204(b).

(36) (35)Mountain and upper piedmont waters mean all of the waters of the Hiwassee; Little Tennessee, including the Savannah River drainage area; French Broad; Broad; New; and Watauga River Basins; and those portions of the Catawba River Basin above Lookout Shoals Dam and the Yadkin River Basin above the junction of the Forsyth, Yadkin, and Davie County lines.

(37) (36)Nonpoint source pollution means pollution which enters waters mainly as a result of precipitation and subsequent runoff from lands which have been

- disturbed by man's activities and includes all sources of water pollution which are not required to have a permit in accordance with G.S. 143-215.1(c).
- (38) (37)Non-process discharge means industrial effluent not directly resulting from the manufacturing process. An example would be non-contact cooling water from a compressor.
- (39) (38)Nutrient sensitive waters mean those waters which are so designated in the classification schedule in order to limit the discharge of nutrients (usually nitrogen and phosphorus). They are designated by "NSW" following the water classification.
- (40) (39)Offensive condition means any condition or conditions resulting from the presence of sewage, industrial wastes or other wastes within the waters of the state or along the shorelines thereof which shall either directly or indirectly cause foul or noxious odors, unsightly conditions, or breeding of abnormally large quantities of mosquitoes or other insect pests, or shall damage private or public water supplies or other structures, result in the development of gases which destroy or damage surrounding property, herbage or grasses, or which may cause the impairment of taste, such as from fish flesh tainting, or affect the health of any person residing or working in the area.
- (41) (40)Primary Nursery Areas (PNAs) are tidal saltwaters which provide essential habitat for the early development of commercially important fish and shellfish and are so designated by the Marine Fisheries Commission.
- (42) (41)Primary recreation includes swimming, skin diving, skiing, and similar uses involving human body contact with water where such activities take place in an organized or on a frequent basis.
- (43) (42)Protected area means the area adjoining and upstream of the critical area in a WS-IV water supply in which protection measures are required. The boundaries of the protected areas are defined as extending five miles upstream and draining to water supply reservoirs (measured from the normal pool elevation) or to the ridge line of the watershed (whichever comes first); or 10 miles upstream and draining to the intake located directly in the stream or river (run-of-the-river), or to the ridge line of the watershed (whichever comes first). Local governments may extend the protected area. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the protected area if these landmarks are immediately adjacent to the appropriate outer boundary of five or 10 miles. In some cases the protected area will encompass the entire watershed. The Commission may adopt a different protected area size during the reclassification process.
- (44) (43)Residential development means buildings for residence such as attached and detached single family dwellings, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc.
- (45) (44)Secondary recreation includes wading, boating, other uses not involving human body contact with water, and activities involving human body contact with water where such activities take place on an infrequent, unorganized, or incidental basis.
- (46) (45)Sensitive species for aquatic toxicity testing is any species utilized in procedures accepted by the Commission or its designee in accordance with Rule .0103 of this Subchapter, or the following genera:
- (a) Daphnia;
 - (b) Ceriodaphnia;
 - (c) Salmo;
 - (d) Pimephales;
 - (e) Mysidopsis;
 - (f) Champia;
 - (g) Cyprinodon;
 - (h) Arbacia;
 - (i) Penaeus;
 - (j) Menidia;
 - (k) Notropis;
 - (l) Salvelinus;
 - (m) Oncorhynchus;
 - (n) Selenastrum.
- Other genera may be accepted by the Commission or its designee on a case-by-case basis.
- (47) (46)Shellfish culture includes the use of waters for the propagation, storage and

gathering of oysters, clams, and other shellfish for market purposes.

- (48) (47)Sludge/residuals means any solid or semisolid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission.
- (49) (48)Source of water supply for drinking, culinary or food-processing purposes means any source, either public or private, the waters from which are used for human consumption, or used in connection with the processing of milk, beverages, food, or other purpose which requires water suitable for human consumption.
- (50) (49)Swamp waters mean those waters which are classified by the Environmental Management Commission and which are topographically located so as to generally have very low velocities and certain other characteristics which are different from adjacent streams draining steeper topography. They are designated by "Sw" following the water classification.
- (51) (50)Tidal salt waters mean all tidal waters which are classified by the Environmental Management Commission which generally have a natural chloride ion content in excess of 500 parts per million and include all waters assigned S classifications.
- (52) (51)Toxic substance or toxicant means any substance or combination of substances (including disease-causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring.
- (53) (52)Trout waters are those waters which have conditions which will sustain and allow for trout propagation and survival of stocked trout on a year-round basis. These waters are classified by the Commission after considering the

requirements of Rule .0101(b) and (c) of this Subchapter and include all waters designated by "Tr" in the water classification.

- (54) (53)Waste disposal includes the use of waters for disposal of sewage, industrial waste or other waste after approved treatment.
- (55) (54)Water dependent structures are those structures for which the use requires access or proximity to or siting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.
- (56) (55)Water quality based effluent limits and best management practices are limitations or best management practices developed by the Division for the purpose of protecting water quality standards and best usage of surface waters consistent with the requirements of General Statute 143-214.1 and the Federal Water Pollution Control Act as amended.
- (57) (56)Waters with quality higher than the standards means all waters for which the determination of waste load allocations (pursuant to Rule .0206 of this Section) indicates that water quality is sufficiently greater than that defined by the standards such that significant pollutant loading capacity still exists in those waters.
- (58) (57)Watershed means the entire land area contributing surface drainage to a specific point. For the purposes of the water supply protection rules (15A NCAC 2B .0211) local governments may use major landmarks such as highways or property lines to delineate the outer boundary of the drainage area if these landmarks are immediately adjacent to the ridgeline.
- (59) Wetlands are "waters" as defined by G.S. 143-212(6) and are areas that are inundated or saturated by an accumulation of surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands classified as

waters of the state are restricted to waters of the United States as defined by 33 CFR 328.3 and 40 CFR 230.3.

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1).

.0220 WETLAND STANDARDS

(a) General. The water quality standards for all wetlands are designed to protect, preserve, restore and enhance the quality and uses of wetlands and other waters of the state influenced by wetlands. The following are wetland uses:

- (1) Storm and flood water storage and retention and the moderation of extreme water level fluctuations;
- (2) Hydrologic functions including groundwater discharge that contributes to maintain dry weather streamflow and, at other locations or times, groundwater recharge that replenishes the groundwater system;
- (3) Filtration or storage of sediments, nutrients, toxic substances, or other pollutants that would otherwise adversely impact the quality of other waters of the state;
- (4) Shoreline protection against erosion through the dissipation of wave energy and water velocity and stabilization of sediments;
- (5) Habitat for resident wetland-dependent aquatic organisms including, but not limited to fish, crustaceans, mollusks, insects, annelids, planktonic organisms and the plants and animals upon which these aquatic organisms feed and depend upon for their needs in all life stages;
- (6) Habitat for resident wetland-dependent wildlife species, including mammals, birds, reptiles and amphibians for breeding, nesting, cover, travel corridors and food; and
- (7) Recreational, educational and scientific uses.

(b) The following standards shall be used to assure the maintenance or enhancement of the existing uses of wetlands identified in Paragraph (a) of this Rule:

- (1) Liquids, fill or other solids or dissolved gases may not be present in amounts which may cause adverse impacts on existing wetland uses;
- (2) Floating or submerged debris, oil,

deleterious substances, or other material may not be present in amounts which may cause adverse impacts on existing wetland uses;

- (3) Materials producing color, odor, taste or unsightliness may not be present in amounts which may cause adverse impacts on existing wetland uses;
- (4) Concentrations or combinations of substances which are toxic or harmful to human, animal or plant life may not be present in amounts which individually or cumulatively may cause adverse impacts on existing wetland uses;
- (5) Hydrological conditions necessary to support the biological and physical characteristics naturally present in wetlands shall be protected to prevent adverse impacts on:
 - (A) Water currents, erosion or sedimentation patterns;
 - (B) Natural water temperature variations;
 - (C) The chemical, nutrient and dissolved oxygen regime of the wetland;
 - (D) The movement of aquatic fauna;
 - (E) The Ph of the wetland; and
 - (F) Water levels or elevations.
- (6) Existing habitats and the populations of wetland flora and fauna shall be maintained to protect biological integrity as defined at 15A NCAC 2B .0202 by:
 - (A) Protecting food supplies for fish and wildlife;
 - (B) Protecting reproductive and nursery areas; and
 - (C) Protecting dispersal corridors.

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1).

SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0500 - WATER QUALITY CERTIFICATION

.0501 PURPOSE

(a) The provisions of this Section shall apply to all division regulatory, planning, resource management, liaison and financial aid determinations that affect surface waters and wetlands as defined by 15A NCAC 2B .0202. This Section shall only apply to specific activities

which require state review after the effective date of this Rule and which require a Division determination concerning effects on surface waters or wetlands. Activities that are described in Section 404(f)(1)(A)-(F) of the Clean Water Act (33 U.S.C. 1344) are exempt from this Rule.

(b) These Rules outline the application and review procedures for activities that require water quality certifications (certifications) pursuant to Section 401 of the Clean Water Act (33 U.S.C. 1341). Certifications are required whenever construction or operation of facilities will result in a discharge into navigable waters as described in 33 CFR Part 323. The federal definition of navigable waters includes wetlands as defined at 33 CFR 328.3 and 40 CFR 230.3.

(c) Certifications shall be required for all activities that require a Section 404 permit from the U.S. Army Corps of Engineers (COE). Certifications may be issued for individual activities (individual certifications) or issued for specific types or groups of activities (general certifications):

- (1) Individual certifications are issued on a case-by-case basis and the procedures outlined in the following Rules are required for each individual certification.
- (2) General certifications are issued for specific types or groups of activities that are similar in nature and considered to have minimal impact. The application and review procedures for requesting concurrence from the Division that the general certification can be used for the proposed activity are the same as the procedures outlined in the following rules for individual certifications unless specifically stated otherwise in the general certification.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(c).

.0501 .0502 APPLICATION

(a) Application for Certification. Any person, as defined in Article 21, Chapter 143, North Carolina General Statutes, desiring issuance of the state certification or coverage under a general certification required by Section 401 of the Federal Water Pollution Control Act as amended shall file with the Director of North Carolina Division of Environmental Management (director), at the office in Raleigh, North Carolina, an original and six copies of an application for certification, and

the Director shall mail one copy of the application to the North Carolina Director of the Division of Marine Fisheries; one copy to the North Carolina Board of Health; one copy to the North Carolina Wildlife Resources Commission; one copy to the appropriate federal licensing or permitting agency; and one copy to the Environmental Protection Agency (EPA). The application shall specify:

- (1) the date of application;
- (2) the name, address, and principal place of business of the applicant and phone number of the property owner;
- (3) if the applicant is a corporation, the state in which it is domesticated, the name of its principal officers and the name and address of the North Carolina process agency and the name of the individual who shall be primarily responsible for the conduct of the activity for which certification is sought;
- (4) the name of the individual who shall be primarily responsible for conduct of the activity for which certification is sought (plant manager or other person responsible for facility operation);
- (4) (5) the nature of the activity to be conducted by applicant;
- (5) (6) whether the discharge is occurring has occurred or is proposed;
- (6) (7) the location of the discharge, stating the municipality, if applicable; the county; the drainage basin; the name of the receiving waters; and the location of the point of discharge with regard to the receiving waters;
- (7) a description of the receiving waters, including type (creek, river, swamp, canal, lake, pond or estuary) if applicable; nature (fresh, brackish or salt); and wetland classification;
- (8) the nature of the receiving waters, including type (creek, river, swamp, canal, lake or pond); nature (fresh, brackish or salt); and direction of flow;
- (8) (9) description of the type of waste treatment facilities if applicable; if any, that will receive the wastewater before discharge into the receiving waters;
- (10) the type of discharge, including chemical composition; quantity, expressed as gallons per unit of time; frequency; temperature; and kinds and quantities of pollutants or contaminants;
- (11) projected future variations in the nature

of the discharge;

- (12) ~~the type, diameter or cross section and length of the conduit conveying the discharge;~~
- (13) ~~names and addresses of adjoining riparian owners.~~

(b) Maps. There shall be attached to the application a map(s) or sketch(es) of sufficient detail to accurately delineate the boundaries of the lands owned or to be utilized by the applicant in carrying out its activity; the location, dimensions and type of any structures erected or to be erected on said lands for use in connection with the activity; ~~the location or proposed location of the conduit conveying the discharge;~~ and the location and extent of the receiving waters including wetlands within the boundaries in the vicinity of said lands. ~~Maps and sketches shall be on sheets approximately 8 1/2 inches by 11 inches in size.~~

(c) Power to Request Additional Information. The Director may request, and the applicant shall furnish, any additional information that may be found necessary for the proper consideration of the application.

(d) Omissions From Applications. If the applicant considers that it is not feasible or is unnecessary to furnish any portion of the information required by ~~Subdivisions Paragraphs~~ (a) and (b) of this Regulation Rule, applicant shall submit a detailed statement explaining the reasons for omission of any such information; but if the Director does not concur in such omission, applicant shall submit the omitted information.

(e) Investigations. The staff of the Department of ~~Natural Resources and Community Development~~ Environment, Health, and Natural Resources (department) shall conduct such investigation as the Director deems necessary; and applicant shall cooperate in the investigation to the extent that it shall furnish necessary information, allow the staff safe access to the lands and facilities of the applicant and lend such assistance as shall be reasonable.

(f) Who Must Sign Applications. The application will be considered a "valid application" only if the application bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature certifies that the applicant has title to the property, has been authorized by the owner to apply for certification or is a public entity and has the power of eminent domain. Said official in signing the application shall also certify that all information contained therein or in support thereof is true and correct to the best of his knowledge.

(g) The application form may be obtained from the Division of Environmental Management, the Division of Coastal Management, or the U.S. Army Corps of Engineers, Wilmington District, Regulatory Branch.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(c).

.0502 .0503 PUBLIC NOTICE

(a) Notice by Publication. Notice of each pending application for certification shall be published one time in a newspaper having general circulation in the county in which the discharge will occur, or as provided in Paragraph (c) of this Rule. Publication shall be made at least 15 days prior to proposed final action by the Director upon the application and not more than 20 days after acceptance of a completed application.

(b) Contents of Notice. The notice shall set forth the name and address of the applicant; the action requested in the application; the nature and location of the discharge; and the proposed date of final action to be taken by the Director upon the application. The notice shall also state that additional information is on file with the department and may be inspected at any time during normal working hours. Copies of such information on file will be made available upon request and upon payment of the cost thereof to the department.

(c) The public notice requirement may also be satisfied by a joint notice with the Division of Coastal Management (15A NCAC 7J .0206) or the U.S. Army Corps of Engineers according to their established procedures.

(d) ~~(e)~~ Notice of Hearing. If the Director determines that a hearing should be held concerning the granting or denial of the application, the Director shall publish notice of the hearing one time in a newspaper having general circulation in the county in which the discharge will occur. The notice shall be published at least 30 days prior to the date of the hearing. The notice shall state the time, place, and nature of the hearing.

(e) ~~(d)~~ Environmental Water Quality Certification Mailing List. Any person, may request that he or she be mailed copies of all public notices required by this Rule. The Director shall add the name of any such person to an ~~environmental~~ a water quality certification mailing list and shall mail copies of notices to all persons on the list.

~~(e) Notice to Other Persons. The Director may give written notice to such other persons.~~

(f) **Payment of Costs of Public Notice.** The applicant shall pay to the department the costs of advertising public notice required by Paragraphs (a) and ~~(e)~~ (d) of this **Regulation Rule**. Certification shall be withheld until such costs have been paid.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(c).

.0503 .0504 HEARING

(a) **Public Hearing on Certification.** If the Director determines that it is in the public interest that a public hearing for the purpose of reviewing public comment and additional information be held prior to granting or denying certification, the Director shall so notify the applicant by registered or certified mail, return receipt requested, and shall publish and give notice as required by ~~Paragraphs .0502(e) and (d) in Rule .0503~~ Paragraphs (d) and (e) of this Section. Such hearing will be held within 90 days following date of notification. The record of each hearing held under this Paragraph shall remain open for a period of 30 days.

(b) **Hearing for Applicant Upon Certification Denial.** An applicant whose certification is denied or granted subject to unacceptable conditions, shall have the right to a contested case hearing pursuant to the provisions of G.S. 150B-23.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(c).

.0506 CRITERIA FOR REVIEW OF APPLICATIONS

(a) Prior to the evaluation of requests for certification based on the procedures outlined in Paragraphs (b) through (e) of this Rule, the Director shall determine the significant existing uses present in the wetland or surface waters in question and if the proposed activity has the potential to remove or degrade those significant existing uses which are present. Activities which would not remove or degrade existing uses shall be reviewed according to the procedures found in Subparagraph (c)(2)-(5) of this Rule. Those activities covered by general certifications (15A NCAC 2H .0501(c)(2)) which do not require written concurrence from the Division will be deemed certified if the conditions of the certification are followed and may proceed without the review procedures outlined in Paragraphs (b) through (e) of this Rule.

(b) The Director shall not issue a certification

for a project that impacts classified surface waters unless the Director finds that the applicant has demonstrated that the project:

- (1) has no practical alternative under the criteria outlined in Paragraph (f) of this Rule;
- (2) will minimize adverse impacts to the surface waters based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions under the criteria outlined in Paragraph (g) of this Rule;
- (3) does not result in the degradation of groundwaters or surface waters or result in the net loss of existing uses of surface waters as designated in 15A NCAC 2B .0211;
- (4) does not result in cumulative impacts, based upon past or reasonably anticipated future impacts, that cause or will cause a violation of downstream water quality standards;
- (5) provides for protection of downstream water quality standards through the use of on-site stormwater control measures; and
- (6) provides for replacement of existing uses through mitigation as described at Subparagraphs (i)(1) and (2) of this Rule.

(c) The Director shall use the following criteria to review requests for 401 Water Quality Certification for projects in Class WL wetlands as defined in 15A NCAC 2B .0101(c)(8). These criteria are the basic criteria for all wetlands. Additional and more stringent criteria applicable to other specific wetlands are specified in Paragraphs (d) and (e) of this Rule. The Director shall not issue a certification unless the Director finds that the applicant has demonstrated that the project:

- (1) has no practical alternative under the criteria outlined in Paragraph (f) of this Rule;
- (2) will minimize adverse impacts to the wetland based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions under the criteria outlined in Paragraph (g) of this Rule;
- (3) does not result in the degradation of groundwaters or surface waters or result in the net loss of existing uses of wetlands under the criteria outlined in Paragraph (h) of this Rule;
- (4) does not result in cumulative impacts,

based upon past or reasonably anticipated future impacts, that cause or will cause a violation of downstream water quality standards;

- (5) provides protection for downstream water quality standards through the use of on-site stormwater control measures; and
- (6) provides for replacement of existing uses through wetland mitigation as described in Subparagraph (i)(1) and (3)-(7) of this Rule.

(d) The Director shall not issue a 401 Water Quality Certification for a project in a Class SWL wetland (15A NCAC 2B .0101(d)(4)), wetlands that are contiguous to waters designated as HQW, SA, WS-I, WS-II or Trout, or wetlands that are contiguous to rivers designated as a North Carolina or National Wild and Scenic River which are not classified as ORW, unless the Director finds that the applicant has demonstrated that the project meets the criteria outlined in Subparagraphs (c)(1)-(5) of this Rule, and:

- (1) is water dependent and requires access to water as a central element of its basic function. Projects funded by government agencies may be exempted from this requirement if the agency can satisfy the review criteria found in Subparagraphs (c)(1)-(5) of this Rule;
- (2) provides for replacement of existing uses through wetland mitigation as described in Subparagraphs (i)(1), (3)-(6) and (8) of this Rule.

(e) The Director shall not issue a 401 Water Quality Certification for a project in wetlands of exceptional state or national ecological significance which require special protection to maintain existing uses as defined by 15A NCAC 2B .0220. These wetlands include Class UWL wetlands, and wetlands that have been documented to the satisfaction of the Director as habitat essential for the continued existence of state or federally listed threatened or endangered species, unless the Director finds that the applicant has demonstrated that the project meets the criteria outlined in Subparagraphs (c)(1)-(5) and (d)(1) of this Rule, and:

- (1) the wetland impacts are necessary for the proposed project to meet a demonstrated public need;
- (2) provides for replacement of existing uses through wetland mitigation as described in Subparagraphs (i)(1), (3)-(6) and (9) of this Rule.

(f) The Director shall apply the following criteria in evaluating the practical alternatives analysis:

- (1) The basic project purpose cannot be accomplished using other reasonably available sites in the same general area as the proposed activity that would avoid or result in less adverse impact to surface waters or wetlands;
- (2) The potential for a reduction in size, configuration or density of the proposed activity and all alternative designs that would avoid or result in less adverse impact to surface waters or wetlands but would accomplish the basic purpose of the project.

(g) The Director shall apply the following criteria in evaluating the minimization analysis:

- (1) The spatial and dimensional requirements of the project;
- (2) The location of any existing structural or natural features that may dictate the placement or configuration of the proposed project;
- (3) The purpose of the project and how the purpose relates to placement, configuration or density; and
- (4) The ability of the surface waters or wetland to continue to support the existing uses after project completion.

(h) The Director shall apply the following criteria in determining whether significant uses are present at a particular wetland site: Designated uses as outlined in 15A NCAC 2B .0220(a)(1)-(7) are assumed to exist in all classes of wetlands unless the applicant demonstrates that significant uses are not present at a particular site using a wetland ecological evaluation method approved by the Director.

(i) The Director shall use the following guidelines in determining appropriate mitigation for unavoidable losses of existing uses which would otherwise result in a violation of water quality standards:

- (1) The Director shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific project.
- (2) Impacts to classified surface waters shall be conducted in such a manner that the existing uses shall be replaced.
- (3) Acceptable methods of wetlands mitigation are listed below in the order of preference:
 - (A) Restoration: the re-establishment of

wetland hydrology and vegetation in an area where it previously existed.

- (B) Creation: the construction of a wetland in an area where wetlands did not exist in the recent past.
- (C) Enhancement: increasing one or more of the functions of an existing wetland by manipulation of vegetation or hydrology.
- (D) Preservation: protection of wetlands through purchase, donation or conveyance of a conservation easement to an appropriate government or non-profit agency for management.
- (4) Restoration is the preferred method of wetlands mitigation. The other methods may be utilized if the applicant can demonstrate that restoration is not practical or that the proposed alternative is the most ecologically viable method of replacing the lost functions and values.
- (5) All mitigation proposals shall provide for the replacement of wetland acres lost due to the proposed activity at a minimum of a 1:1 ratio through restoration or creation prior to utilizing enhancement or preservation to satisfy the mitigation requirements.
- (6) Wetlands mitigation shall be based on the following minimally acceptable acreage ratios unless the applicant can demonstrate that water quality standards can be protected through other means: restoration, 2:1; creation, 3:1; enhancement, 4:1; and preservation, 10:1.
- (7) Mitigation for impacts to wetlands designated in Paragraph (c) of this Rule shall be conducted within the same river basin and physiographic province when practical. Unavoidable losses of wetlands adjacent to waters classified as WS-III shall be replaced within the water supply watershed when practical.
- (8) Mitigation for impacts to wetlands designated in Paragraph (d) of this Rule shall be of the same wetland type and located within the same river sub-basin when practical. Mitigation for impacts to wetlands adjacent to waters classified as WS-I or WS-II shall be replaced within the water supply watershed when practical.
- (9) Mitigation for impacts to wetlands designated in Paragraph (e) of this Rule

shall be of the same wetland type and within the same watershed when practical.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(c).

.0507 ~~.0504~~ ISSUANCE OF CERTIFICATION

(a) Time Limit for Final Action on Certification Application. All applications for certification shall be granted or denied within ~~130~~ 60 days after receipt at the offices of the Director in Raleigh, North Carolina, ~~unless: Failure to take final action within 60 days will result in a waiver of the certification requirement by the Director, unless:~~

- (1) The applicant agrees, in writing, to a longer period;
- (2) Final decision is to be made pursuant to a public hearing;
- (3) Applicant fails to furnish information necessary to the Director's decision;
- (4) Applicant refuses the staff access to its records or premises for the purpose of gathering information necessary to the Director's decision;
- (5) Information necessary to the Director's decision is unavailable.

(b) Time Limit for Final Action on Certification Application After Hearing. All applications for certification shall be granted or denied within ~~130~~ 60 days after public hearing. ~~Failure to take final action within 60 days will result in a waiver of the certification requirement by the Director unless the applicant otherwise agrees in writing, or unless~~ ~~Subdivision Subparagraph (a)(3), (4), or (5) of this Regulation Rule shall apply.~~

(c) Conditions of Certification. Any certification issued pursuant to this Rule may contain such conditions as the Director shall deem necessary to insure compliance with Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act Amendments.

(d) Modification or Revocation of Certification

- (1) Any certification issued pursuant to this Rule is subject to revocation or modification for violation of conditions of 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act Amendments.
- (2) Any certification issued pursuant to this Rule is subject to revocation or modification upon a determination that information contained in the application or presented in support thereof is incorrect

or if conditions under which the certification was made have changed.

(e) Notification of Unapproved Application. In the event that the Director denies the application for certification or for any reason is unable to approve the application, the Director shall so notify the applicant by certified or registered mail, return receipt requested, specifying in such notification the reasons for the denial or inability to

approve; and a copy of the notification shall be mailed to the appropriate federal licensing or permitting agency and EPA.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(c).

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Environmental Management Commission intends to amend rule cited as 15A NCAC 2B .0309.

The proposed effective date of this action is August 1, 1995.

The public hearing will be conducted at 7:00 p.m. on January 24, 1995 at the South Davie Junior High School, 700 Harrison Street, Mocksville, North Carolina.

Reason for Proposed Action:

Bear Creek - Yadkin Pee Dee River Basin

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

ANNOUNCEMENT OF A PUBLIC HEARING TO RECLASSIFY THE BEAR CREEK WATERSHED IN DAVIE COUNTY

A public hearing will be held by the N.C. Department of Environment, Health and Natural Resources on behalf of the Environmental Management Commission. The Department seeks public comment on the proposed reclassification of a portion of the Bear Creek watershed that was formerly used by the Town of Mocksville for drinking water supply purposes. Changes in stream classifications can affect activities in and adjacent to these waters. Local governments with land use authority in water supply watersheds are required to develop, implement and enforce ordinances that comply with North Carolina Water Supply Watershed Protection Rules.

The first section of this announcement will list two possible options for the classification changes that are being proposed. The second section will provide a summary of the requirements associated with a water supply classification. The last section will provide information on the public hearing and how to submit comments.

Proposed Classification Change

Bear Creek (Yadkin River Basin)

Affected Area:

The Bear Creek watershed (includes Little Bear Creek and Blue Creek tributaries) is currently classified as WS-II from its source to a point 0.9 mile downstream of U.S. Highway 64. Bear Creek is classified as WS-II CA (critical area) from a point 0.9 mile downstream of U.S. Highway 64 to the former raw drinking water supply intake (that was located approximately 1.4 miles downstream of U.S. Highway 64). The waters are classified as WS-IV downstream of the former water supply intake due to protection required for a water supply intake located further downstream on the South

Yadkin River.

Proposed Change:

Proposed Option 1 is to move the critical area upstream of Interstate 40 and keep the WS-II and WS-II CA classifications in place for Bear Creek and its tributaries upstream of I-40. The critical area would extend from I-40 linearly one-half mile upstream. Bear Creek downstream of I-40 to the former water supply intake location would be WS-IV. Bear Creek downstream of this location is already classified as WS-IV due to the overlap of protection for the water supply intake located on the South Yadkin River.

Proposed Option 2 is to reclassify Bear Creek and its tributaries from Classes WS-II CA and WS-II to Classes C and WS-IV. This proposal would remove the land use requirements associated with water supply protection for the section of the Bear Creek watershed from its source to a point 0.5 mile upstream of Davie County State Road 1307 and for Little Bear Creek from its source to a point 0.2 mile upstream of Davie County State Road 1307. Downstream of these points and including all of Blue Creek would be classified as WS-IV due to the overlap of protection for the water supply intake on the South Yadkin River.

Local Governments with Land Use Authority:

Davie County and the Town of Mocksville.

Summary of Requirements

The following chart summarizes the requirements related to the WS-II water supply classification. These are the major provisions of the water supply regulation (15A NCAC 2B .0104, .0202 and .0211); to review all of them, write or call the contact person listed below for more information. **The following requirements are currently applicable to Bear Creek and its tributaries from its source to the former water supply intake, which was located approximately 1.4 miles downstream of U.S. Highway 64.**

Requirements for a WS-II Classification

		Development Criteria			
	<u>Wastewater Dischargers</u>	<u>W/O Stormwater, Low Density Opt.</u>	<u>W/Stormwater High Density Opt.</u>	<u>5%/70 % Provision</u>	<u>Agriculture BMPs</u>
Critical Area	General Permits	1du*/2acres or up to 6% built upon area	6 -12% built upon area	Not Allowed	Required (1)
Balance of Watershed	General Permits	1du*/acre or up to 12% built upon area	12 - 24% built upon area	Allowed	Not Required (1)

The following requirements are presently applicable to Bear Creek downstream of the former water supply intake for the Town of Mocksville and would be applicable to other areas of the Bear Creek watershed as noted in the above proposals (1 and 2) .

Requirements for a WS-IV Classification

Development Criteria					
	Wastewater <u>Dischargers</u>	W/O Stormwater, <u>Low Density Opt.</u>	W/Stormwater <u>High Density Opt.</u>	5%/70% <u>Provision</u>	Agriculture <u>BMPs</u>
Critical Area Domestic & Industrial (2)		2du*/acre or up to 24% built upon area (3)	24-50% built upon area (3)	Not Allowed	Required (1)

PROPOSED RULES

Balance of Domestic & Watershed Industrial	2du*/acre or up to 24% built upon area (3,4)	24-70% built upon area (3,4)	Not Allowed	Not Required (1)
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The following Notes are applicable to both of the above classifications.

Notes:

- * du means dwelling unit.
- Critical area is one-half mile and draining to water supply intake.
- Requirements applicable to new development. Existing single family lots are exempt.
- Buffers required along all perennial waters; 30 foot buffer for low density and 100 foot buffer for high density development.
- Wet detention basins are required with the high density option. Local governments will assume ultimate responsibility for the operation and maintenance of these stormwater control devices.
- (1) All agricultural activities are subject to provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. A ten foot vegetated buffer or equivalent control as determined by the Soil and Water Conservation Commission is required in the critical area. Animal operations which are deemed permitted under 15A NCAC 2H .0217 are allowed in all water supply watersheds.
- (2) New industrial process wastewater discharges are allowed but will require additional treatment requirements.
- (3) Applies only to projects requiring a Sediment/Erosion Control Plan.
- (4) 1/3 acre lot or 36% built upon area is allowed for projects without a curb and gutter street system.

The purpose of the development density controls, the wastewater discharge requirements and the agricultural management practices are to prevent the degradation of the water quality for use as a drinking water supply from pollutant impacts.

Public Hearing Information

PURPOSE:

The purpose of this hearing and the written comment period is to receive comments on the proposed reclassification from interested people. The written comment period will be open until February 28, 1995. The EMC is interested in comments in favor of, opposed to, or alternatives to the proposed changes.

The EMC may make some changes in final rules without renote and rehearing, as long as the adopted rules do not differ substantially from the proposed rules. The EMC may adopt final management requirements, rules and classifications that are more or less stringent than those being noticed. (See NCGS 150B 21.2(f) for this authority.) The EMC must determine that the final adopted rules are not substantially different from the proposed rules. All interested and potentially affected persons are strongly encouraged to read the entire announcement and supporting information and make comments on the proposal presented. The proposed effective date for final rules for the proposed changes is August 1, 1995.

Comment Procedures: You may submit comments, statements, data and other information in writing prior to, during or after the hearing but no later than February 28, 1995. You may also present verbal comments at the hearing. The Hearing Officer may limit the length of time that you may speak so that all those who wish to speak may have an opportunity to do so. We encourage you to submit written comments.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0309 YADKIN-PEE DEE RIVER BASIN

(a) Places where the schedule may be inspected:

- (1) Clerk of Court:
Alexander County
Anson County
Cabarrus County
Caldwell County
Davidson County
Davie County
Forsyth County
Guilford County
Iredell County
Mecklenburg County
Montgomery County
Randolph County
Richmond County
Rowan County
Stanly County
Stokes County
Surry County
Union County
Watauga County
Wilkes County
Yadkin County

(2) North Carolina Department of Environment, Health, and Natural Resources:

- (A) Mooresville Regional Office
919 North Main Street
Mooresville, North Carolina
- (B) Winston-Salem Regional Office
8025 North Point Boulevard, Suite 100
Winston-Salem, North Carolina
- (C) Fayetteville Regional Office
Wachovia Building
Suite 714
Fayetteville, North Carolina
- (D) Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina

(b) Unnamed Streams. Such streams entering Virginia are classified "C," and such streams entering South Carolina are classified "C".

(c) The Yadkin-Pee Dee River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) February 12, 1979;
- (2) March 1, 1983;
- (3) August 1, 1985;
- (4) February 1, 1986;
- (5) October 1, 1988;
- (6) March 1, 1989;
- (7) January 1, 1990;
- (8) August 1, 1990;
- (9) January 1, 1992;

- (10) April 1, 1992;
- (11) August 3, 1992;
- (12) December 1, 1992;
- (13) April 1, 1993;
- (14) September 1, 1994.

(d) The Schedule of Classifications and Water Quality Standard for the Yadkin-Pee Dee River Basin has been amended effective October 1, 1988 as follows:

- (1) Mitchell River [Index No. 12-62-(1)] from source to mouth of Christian Creek (North Fork Mitchell River) including all tributaries has been reclassified from Class B Tr to Class B Tr ORW.
- (2) Mitchell River [Index No. 12-62-(7)] from mouth of Christian Creek (North Fork Mitchell River) to Surry County SR 1315 including all tributaries has been classified from Class C Tr to C Tr ORW, except Christian Creek and Robertson Creek which will be reclassified from Class B Tr to Class B Tr ORW.
- (3) Mitchell River [Index No. 12-62-(12)] from Surry County SR 1315 to mouth of South Fork Mitchell River including all tributaries from Class C to Class C ORW.

(e) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin was amended effective March 1, 1989 as follows:

- (1) Elk Creek [Index Nos. 12-24-(1) and 12-24-(10)] and all tributary waters were reclassified from Class B-trout, Class C-trout and Class B to Class B-trout ORW, Class C-trout ORW and Class B ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin was amended effective January 1, 1990 as follows: Barnes Creek (Index No. 13-2-18) was reclassified from Class C to Class C ORW.

(g) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin has been amended effective January 1, 1992 as follows:

- (1) Little River [Index Nos. 13-25-(10) and 13-25-(19)] from Suggs Creek to Densons Creek has been reclassified from Classes WS-III and C to Classes WS-III HQW and C HQW.
- (2) Densons Creek [Index No. 13-25-20-(1)] from its source to Troy's

Water Supply Intake including all tributaries has been reclassified from Class WS-III to Class WS-III HQW.

- (3) Bridgers Creek (Index No. 13-25-24) from its source to the Little River has been reclassified from Class C to Class C HQW.

(h) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin was amended effective April 1, 1992 with the reclassification of the North Prong South Fork Mitchell River from Class C to Class C Trout.

(i) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(j) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin has been amended effective December 1, 1992 as follows:

- (1) Pike Creek (Index No. 12-46-1-2) was reclassified from Class C Tr to Class C Tr HQW;
- (2) Basin Creek (Index No. 12-46-2-2) was reclassified from Class C Tr to Class C Tr ORW;
- (3) Bullhead Creek (Index No. 12-46-4-2) was reclassified from Class C Tr to Class C Tr ORW;
- (4) Rich Mountain Creek (Index No. 12-46-4-2-2) was reclassified from Class Tr to Class C Tr ORW; and
- (5) Widows Creek (Index No. 12-46-4-4) was reclassified from Class C Tr HQW to Class C Tr ORW.

(k) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin has been amended effective September 1, 1994 as follows:

- (1) Lanes Creek [Index Nos. 13-17-40-(1) and 13-17-40-(10.5)] from its source to

the Marshville water supply dam including tributaries was reclassified from Classes WS-II and WS-II CA to Class WS-V.

- (2) The South Yadkin River [Index Nos. 12-108-(9.7) and 12-108-(15.5)] from Iredell County SR 1892 to a point 0.7 mile upstream of the mouth of Hunting Creek including associated tributaries was reclassified from Classes WS-V, C and WS-IV to Classes WS-V, WS-IV, C and WS-IV CA.
- (3) The Yadkin River [Index Nos. 12-(53) and 12-(71)] from a point 0.3 mile upstream of the mouth of Elkin Creek (River) to the Town of King water supply intake including associated tributaries was reclassified from Classes C and WS-IV to Classes WS-IV and WS-IV CA.
- (4) The Yadkin River [Index Nos. 12-(80.5), 12-(81.5) and 12-(84.5)] from the Town of King water supply intake to the Davie County water supply intake reclassified from Classes C, B, WS-IV and WS-V to Classes WS-IV, WS-IV&B and WS-IV CA.

(l) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin has been amended effective August 1, 1995 as follows:

OPTION NUMBER 1

- (1) Bear Creek [Index Nos. 12-108-18-(3), 12-108-18-(3.3)], Little Bear Creek [Index No. 12-108-18-2), and Blue Branch (Index No. 12-108-18-2-1) were reclassified from WS-II and WS-II CA (Critical Area) to WS-II, WS-II CA and WS-IV.

OPTION NUMBER 2

- (1) Bear Creek [Index Nos. 12-108-18-(3), 12-108-18-(3.3)], Little Bear Creek [Index No. 12-108-18-2), and Blue Branch (Index No. 12-108-18-2-1) were reclassified from WS-II and WS-II CA (Critical Area) to C and WS-IV.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the DEHNR - Soil and Water

Conservation intends to amend rule cited as 15A NCAC 6C .0417.

The proposed effective date of this action is March 1, 1995.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice):

Any person(s) requesting a public hearing on the proposed rule must submit such a request in writing within 15 days after publication of the notice. The request must be submitted to: Glenn Sappie, Economist, P.O. Box 27687, Raleigh, NC 27611-7687. Mailed written request must be postmarked no later than December 16, 1994.

Reason for Proposed Action: *Deletes unnecessary reference to state bonds, since not all time-limited funds available for Small Watershed Grant are provided through state bonds.*

Comment Procedures: *Interested persons may contact Glenn Sappie at (919) 733-2302 for information regarding this rule. Written comments will be received for 30 days after publication of the notice. The comments must be submitted to: Glenn Sappie, DSWC, P.O. Box 27687, Raleigh, NC 27611. Mailed written comments must be postmarked no later than December 31, 1994.*

CHAPTER 6 - SOIL AND WATER CONSERVATION COMMISSION

SUBCHAPTER 6C - SMALL WATERSHED PROGRAM

SECTION .0400 - SMALL WATERSHED GRANTS

.0417 PREREQUISITE FOR DISBURSEMENT OF GRANT FUNDS

(a) Land Rights. The grant recipient shall acquire all land rights involved in water retarding structure sites (including flood prevention, water supply or recreation) and recreation sites prior to disbursement of grant funds; however, the commission has the discretion to approve disbursement in the following situations:

- (1) The acquiring agency has not obtained all land rights, but has options to purchase those remaining, or has initiated

eminent domain proceedings and will have funds on hand to complete the land rights acquisitions after disbursement.

- (2) The acquiring agency has reached a written agreement with a utility company or the Department of Transportation concerning the subsequent relocation of a public utility or a state road.
- (3) When grant funds are ~~provided through~~ time-limited reversionary ~~state bonds~~, and upon evidence satisfactory to the Commission that the grant recipient will cover at least 50 percent of land rights acquisition costs. The Commission may make partial funds available as the grant recipient evidences financial ability to cover land rights acquisition costs at specific phases of development including but not limited to surveying, appraisal and purchase of individual parcels.

(b) Construction and Engineering:

- (1) The commission has the discretion to approve either lump sum or progressive grant disbursement payments for construction and engineering purposes. The commission shall evaluate the applicant's financial needs and other pertinent data to determine the manner of payment. However, the commission shall withhold at least 10 percent of the disbursement to insure satisfactory completion of construction/engineering works.
- (2) Prior to any disbursement for construction, the grant recipient shall certify on Form 004LR that it has acquired all necessary land rights in compliance with all applicable laws, rules, and regulations. The commission may accept an executed SCS-AS-78 Form in lieu of the commission's own form.
- (3) The commission may withhold any payments of state grant funds pending the completion of any required audits or inspections.

Statutory Authority G.S. 139-4(d); 139-56; 143B-294.

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).

COMMERCE

Alcoholic Beverage Control Commission

<i>4 NCAC 2T .0103 - Beer Franchise Law; "Brand" Defined</i>	<i>RRC Objection 09/15/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/20/94</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Management

<i>15A NCAC 2H .0907 - Program Approval Procedures: Revision and Withdrawal</i>	<i>RRC Objection 10/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/20/94</i>
<i>15A NCAC 2H .0908 - Reporting/Record Keeping Req for POTWS/Industrial Users</i>	<i>RRC Objection 10/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/20/94</i>
<i>15A NCAC 2H .0916 - Permits</i>	<i>RRC Objection 10/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/20/94</i>

Mining: Mineral Resources

<i>15A NCAC 5B .0013 - Response Deadline to Department's Request(s)</i>	<i>RRC Objection 09/15/94</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd 10/20/94</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff. 11/01/94</i>

Wildlife Resources and Water Safety

<i>15A NCAC 10I .0001 - Definitions and Procedures</i>	<i>RRC Objection 08/18/94</i>
<i>Rule Returned to Agency</i>	<i>Obj. Cont'd 09/15/94</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff. 10/01/94</i>

HUMAN RESOURCES

Departmental Rules

<i>10 NCAC 1O .0002 - Complaints</i>	<i>RRC Objection 10/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/20/94</i>

Medical Assistance

<i>10 NCAC 50B .0403 - Reserve</i>	<i>RRC Objection 10/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/20/94</i>

INSURANCE

Medical Database Commission

<i>11 NCAC 15 .0002 - Definitions</i>	<i>RRC Objection 10/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 10/20/94</i>

RRC OBJECTIONS

11 NCAC 15 .0004 - Uniform Billing Form	RRC Objection	10/20/94
Agency Revised Rule	Obj. Removed	10/20/94
11 NCAC 15 .0005 - Description of Data to be Submitted	RRC Objection	10/20/94
Agency Revised Rule	Obj. Removed	10/20/94
11 NCAC 15 .0006 - Data Submission	RRC Objection	10/20/94
Agency Revised Rule	Obj. Cont'd	10/20/94
11 NCAC 15 .0007 - Provider Verification	RRC Objection	10/20/94
Agency Revised Rule	Obj. Cont'd	10/20/94
11 NCAC 15 .0008 - Compliance; Penalties for Noncompliance	RRC Objection	10/20/94
Agency Revised Rule	Obj. Removed	10/20/94
11 NCAC 15 .0009 - Data Accessibility	RRC Objection	10/20/94
Agency Revised Rule	Obj. Removed	10/20/94

LICENSING BOARDS AND COMMISSIONS

Board of Mortuary Science

21 NCAC 34B .0108 - Trainee Pocket Certificate	RRC Objection	10/20/94
Agency Repealed Rule	Obj. Removed	10/20/94
21 NCAC 34B .0125 - Mortuary Science Student Permit Card	RRC Objection	10/20/94
Agency Repealed Rule	Obj. Removed	10/20/94
21 NCAC 34B .0509 - Courtesy Card Form	RRC Objection	10/20/94
Agency Repealed Rule	Obj. Removed	10/20/94
21 NCAC 34B .0609 - Funeral Establishment Permit Form	RRC Objection	10/20/94
Agency Repealed Rule	Obj. Removed	10/20/94

Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors

21 NCAC 50 .1102 - License Fees	RRC Objection	10/20/94
Agency Revised Rule	Obj. Removed	10/20/94

Board of Sanitarian Examiners

21 NCAC 62 .0201 - Petitions	RRC Objection	10/20/94
Agency Revised Rule	Obj. Removed	10/20/94
21 NCAC 62 .0203 - Hearings	RRC Objection	10/20/94
Agency Revised Rule	Obj. Removed	10/20/94

REVENUE

Individual Income Tax Division

17 NCAC 6B .0118 - Electronic Filing of Individual Income Tax Returns	RRC Objection	10/20/94
Agency Revised Rule	Obj. Removed	10/20/94

SECRETARY OF STATE

Land Records Management Division

18 NCAC 8 .0101 - Purpose	RRC Objection	10/20/94
Agency Revised Rule	Obj. Removed	10/20/94
18 NCAC 8 .0105 - Definitions of Terms	RRC Objection	10/20/94
Agency Revised Rule	Obj. Removed	10/20/94
18 NCAC 8 .0402 - Qualifications	RRC Objection	10/20/94
Agency Revised Rule	Obj. Removed	10/20/94

RRC OBJECTIONS

18 NCAC 8 .0903 - Withdrawal of Grant Offer	RRC Objection	10/20/94
Agency Revised Rule	Obj. Removed	10/20/94
18 NCAC 8 .1002 - Inspection of Project	RRC Objection	10/20/94
Agency Revised Rule	Obj. Removed	10/20/94
18 NCAC 8 .1003 - Audit of Projects	RRC Objection	10/20/94
Agency Revised Rule	Obj. Removed	10/20/94
18 NCAC 8 .1209 - Courses of Instruction for Recertification	RRC Objection	10/20/94
Agency Revised Rule	Obj. Removed	10/20/94

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ADMINISTRATION				
<i>North Carolina Council for Women</i>				
Family Violence Prevention Services v. N.C. Council for Women	94 DOA 0242	West	04/13/94	
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Jerry Lee McGowan v. Alcoholic Beverage Control Comm.	93 ABC 0363	Morrison	08/23/94	
Alcoholic Beverage Control Comm. v. Entertainment Group, Inc.	93 ABC 0719	Gray	03/02/94	
Alcoholic Beverage Control Comm. v. Daehae Chang	93 ABC 0775	Morrison	09/21/94	
Rayvon Stewart v. Alcoholic Beverage Control Commission	93 ABC 0793	Nesnow	04/11/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0892	Morgan	06/03/94	
Alcoholic Beverage Control Comm. v. Peggy Sutton Walters	93 ABC 0906	Mann	03/18/94	
Russell Bernard Speller d/b/a Cat's Disco v. Alcoholic Bev Ctl Comm.	93 ABC 0937	Morrison	03/07/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0993	Morgan	06/03/94	
Edward Ogunjobi, Club Piccadilli v. Alcoholic Beverage Control Comm.	93 ABC 1024	West	03/03/94	
Robert Kovalaske, Nick Pikoulas, Joseph Marshburn, Evangelos Pikoulas, d/b/a Our Mom's BBQ v. Alcoholic Beverage Control Commission	93 ABC 1029	Gray	03/04/94	
Christine George Williams v. Alcoholic Beverage Control Comm.	93 ABC 1057	Becton	04/21/94	
Lynn Ann Garfagna v. Alcoholic Beverage Control Commission	93 ABC 1481	Gray	07/19/94	
Alcoholic Beverage Control Comm. v. Raleigh Limits, Inc.	93 ABC 1485	Mann	03/11/94	
Alcoholic Beverage Control Comm. v. COLAP Enterprises, Inc.	94 ABC 0060	Nesnow	06/07/94	
Alcoholic Beverage Control Comm. v. Mitch's Tavern, Inc.	94 ABC 0064	Gray	07/26/94	
Alcoholic Beverage Control Comm. v. Ms. Lucy Jarrell Powell	94 ABC 0070	Morgan	06/06/94	
Alcoholic Beverage Control Comm. v. Richard Wayne Barrow	94 ABC 0079	Gray	10/14/94	
Alcoholic Beverage Control Comm. v. Subhashbai C. Patel	94 ABC 0083	West	11/01/94	
Alcoholic Beverage Control Comm. v. Daphne Ann Harrell	94 ABC 0115	Nesnow	07/18/94	
Mr. & Mrs. Josh Bullock Jr. v. Alcoholic Beverage Control Comm.	94 ABC 0124	Morgan	06/06/94	
Jerome Crawford v. Alcoholic Beverage Control Commission	94 ABC 0125	Morgan	06/06/94	
Lawrence Mungin v. Alcoholic Beverage Control Commission	94 ABC 0149	Chess	08/08/94	
Willie Poole Jr. v. Alcoholic Beverage Control Commission	94 ABC 0232	Chess	09/02/94	
Alonza Mitchell v. Alcoholic Beverage Control Commission	94 ABC 0257	Morrison	07/28/94	9:11 NCR 870
Roy Dale Cagle v. Alcoholic Beverage Control Commission	94 ABC 0260	West	07/13/94	
Christopher C. Gause, James A Jinwright v. Alcoholic Bev. Ctl. Comm.	94 ABC 0532	Gray	09/27/94	
Rajaddin Abdelaziz v. Alcoholic Beverage Control Commission	94 ABC 0600	Chess	09/22/94	
COMMERCE				
<i>Savings Institutions Division</i>				
James E. Byers, et al v. Savings Institutions	93 COM 1622	Chess	03/01/94	
CORRECTION				
<i>Division of Prisons</i>				
Gene Strader v. Department of Correction	94 DOC 0252	Morrison	03/21/94	
CRIME CONTROL AND PUBLIC SAFETY				
Joseph Guernsey & Parents, Robert Guernsey & Dolores Guernsey v. Pitt County Hospital Eastern Radiologists	94 CPS 0413	Gray	07/11/94	

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AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
<i>Crime Victims Compensation Commission</i>				
Mac H. McMillan v. Crime Victims Compensation Commission	92 CPS 1328	Morgan	08/11/94	
James Hugh Baynes v. Crime Victims Compensation Commission	93 CPS 0801	West	03/28/94	9:2 NCR 114
Ross T. Bond v. Victims Compensation Commission	93 CPS 1104	West	04/21/94	
James A. Canady v. Crime Victims Compensation Commission	93 CPS 1108	Gray	03/28/94	
Virginia Roof v. Department of Crime Control & Public Safety	93 CPS 1347	Nesnow	03/24/94	
Karen C. Tilghman v. Crime Victims Compensation Commission	93 CPS 1608	Reilly	05/17/94	9:6 NCR 407
Rosemary Taylor v. Crime Victims Compensation Commission	93 CPS 1626	Nesnow	05/25/94	
Violet E. Kline v. Crime Victims Compensation Commission	93 CPS 1670	Morgan	06/13/94	
James Benton v. Crime Victims Compensation Commission	94 CPS 0034	Chess	06/14/94	
Percy Clark v. Crime Victims Compensation Commission	94 CPS 0127	Reilly	04/19/94	
J. Richard Spencer v. Crime Victims Compensation Commission	94 CPS 0157	Chess	06/14/94	
Albert H. Walker v. Crime Victims Compensation Commission	94 CPS 0229	Reilly	08/11/94	
Barbara Henderson v. Crime Victims Compensation Commission	94 CPS 0259	Morrison	04/07/94	
Shirley Handsome v. Crime Victims Compensation Commission	94 CPS 0286	Gray	04/28/94	
Georgeann Young v. Crime Victims Compensation Commission	94 CPS 0292	Reilly	04/18/94	
Lawrence L. Tyson v. Crime Victims Compensation Commission	94 CPS 0368	Gray	04/26/94	
Ada Battle v. Crime Victims Compensation Commission	94 CPS 0414	Reilly	08/23/94	
Lyman L. Chapman v. Crime Victims Compensation Commission	94 CPS 0415	Chess	06/02/94	
Douglas and Virginia Wilson v. Crime Victims Compensation Comm.	94 CPS 0417	Reilly	06/07/94	
Blanche J. Taylor v. William Hooks Jr., Crime Victims Comp. Comm.	94 CPS 0464	Mann	10/28/94	
Michelle L. Wilcox v. Crime Victims Compensation Commission	94 CPS 0467	Reilly	06/07/94	
Charlie E. McDonald v. Crime Victims Compensation Commission	94 CPS 0468	Gray	09/02/94	9:13 NCR 1056
Michael G. Low v. Crime Victims Compensation Commission	94 CPS 0524	Morrison	06/13/94	
Torbt Smith v. Victims Compensation Commission	94 CPS 0535	Becton	10/26/94	
Maureen P. Wilson v. Crime Victims Compensation Commission	94 CPS 0567	Gray	09/23/94	
Kay Thompson Chambers v. Crime Victims Compensation Commission	94 CPS 0581	Morrison	09/28/94	
James R. Gray v. Crime Victims Compensation Commission	94 CPS 0603	Reilly	08/19/94	
Hazel Jarvis v. Victims Compensation Commission	94 CPS 0664	Chess	07/29/94	
Pattie Hale v. Victims Compensation Fund	94 CPS 0734	West	09/06/94	
Dana Harris v. Crime Victims Compensation Commission	94 CPS 0832	Nesnow	09/26/94	
Dorian Walter St. Patrick Scott v. Victims Compensation Comm.	94 CPS 0883	Nesnow	10/04/94	
Mary E. Haskins v. Crime Victims Compensation Commission	94 CPS 1406	Gray	03/17/94	
EMPLOYMENT SECURITY COMMISSION				
David Lee Bush v. Employment Security Commission	91 ESC 0395	Reilly	08/18/94	
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES				
Bobby Stallings v. Environment, Health, and Natural Resources	90 EHR 0612	Morgan	08/11/94	
James M. Lyles v. Brunswick County Office of Permits	92 EHR 0333	Chess	09/22/94	
William P. Shaver, R. McKinnon Morrison III, Jill Ray, Dr. Wesley C. Ray, Douglas W. Furr, Catherine H. Furr & Caldwell Creek Farm, Inc. v. EHNR-State of North Carolina	93 EHR 0452	Morgan	08/11/94	
Ron D. Graham, Suzanne C. Graham v. Robert Cobb, Mecklenburg Cty	93 EHR 1017	Becton	05/31/94	
Carnel D. Pearson Jr. v. Craven Co. Division of Health & DEHNR	93 EHR 1759	Mann	09/06/94	
Patricia D. Solomon v. Macon County Health Department	93 EHR 1777	West	05/23/94	
Elbert L. Winslow v. EHNR/Guilford Cty Health Dept. & Guilford Cty Planning & Zoning Board	94 EHR 0086	Chess	07/13/94	
Kathryn A. Whitley v. Macon County Health Department	94 EHR 0088	West	07/13/94	
Brook Hollow Estates v. Environment, Health, & Natural Resources	94 EHR 0093	West	06/03/94	
Bobby Combs v. Public Water Supply Section	94 EHR 0202	West	10/19/94	
Oceanfront Court, David C. Gagnon v. Environment, Health, & Nat. Res.	94 EHR 0210	Chess	06/21/94	
Sam's Club #8219 v. Mecklenburg County Health Department	94 EHR 0329	Nesnow	06/15/94	9:7 NCR 496
Everhart & Associates, Inc. and Hettie Tolson Johnson v. Environment, Health, and Natural Resources and Zelig Robinson	94 EHR 0392	Reilly	10/18/94	9:15 NCR 1231
Richard A. Jenkins v. NC Water Pollution Ctl. Sys. Op. Cert. Comm.	94 EHR 0424	West	10/11/94	
Eugene Crawford & Nancy P. Crawford v. Macon County Health Dept.	94 EHR 0500	Gray	06/10/94	
Joseph B. Leggett v. Environment, Health, & Natural Resources	94 EHR 0560	West	09/21/94	
Tri-Circuits, Inc. v. Environment, Health, & Natural Resources	94 EHR 0601	Morrison	06/30/94	
Irene, Will, Eric Litaker v. Montgomery County Health Department	94 EHR 0776	Gray	09/06/94	

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Coastal Management				
Roger Fuller v. EHNHR, Div. of Coastal Mgmt & Environmental Mgmt	89 EHR 1378 ²	Gray	04/07/94	
Roger Fuller v. EHNHR, Div. of Coastal Mgmt & Environmental Mgmt	90 EHR 0017 ²	Gray	04/07/94	
John R. Hooper v. EHNHR, Div./Coastal Mgmt & Bird's Nest Partnership	90 EHR 0455	Morgan	08/11/94	
Gary E. Montalbino v. Division of Coastal Management	93 EHR 1792	Nesnow	03/21/94	
Paley-Midgett Partnership v. Coastal Resources Commission	94 EHR 0315	Gray	06/01/94	
Craven County Health Department				
Cox Transport Equipment, Harvey A Cox v. County of Craven, EHNHR	94 EHR 0487	West	11/01/94	
Environmental Health				
Jane C. O'Malley, Melvin L. Cartwright v. EHNHR & District Hlth Dept Pasquotank-Perquimans-Camden-Chowan	91 EHR 0838	Becton	04/06/94	
Henry Lee Bulluck v. Nash County Health Department & EHNHR	93 EHR 0348	Morgan	07/22/94	
Environment, Health, & Natural Res. v. Clark Harria & Jessie Lee Harris	93 EHR 0924	Becton	03/03/94	
Richard F. Ebensold v. Jackson County Health Department & EHNHR	93 EHR 1391	Chess	06/24/94	
Sidney S. Tate Jr. v. Dept. of Environment, Health, & Natural Resources	94 EHR 0005	Reilly	05/24/94	
George A. Waugh, Shirley A. Waugh v. Carteret Cty Health & Env. Hlth	94 EHR 0128	Chess	07/13/94	
Scotland Water Co., Laurin Lakes v. Environment, Health, & Nat. Res.	94 EHR 0200	Nesnow	04/27/94	
H.A. Lentz v. Department of Environment, Health, & Natural Resources	94 EHR 0235	Nesnow	07/19/94	
Floyd Benn Williams v. Dept. of Environment, Health, & Nat. Res.	94 EHR 0333	Reilly	05/18/94	
Environmental Management				
David Springer v. Dept. of Environment, Health, & Natural Resources	92 EHR 1797	Morgan	05/19/94	
Petroleum Installation Equipment Co., Inc. v. Env., Health & Nat. Res.	93 EHR 0531	Chess	03/21/94	
Howell's Child Care Center, Inc. v. EHNHR, Div of Environmental Mgmt.	93 EHR 0955	West	11/02/94	
Spring Valley Meats, Inc. v. Environment, Health, & Natural Resources	93 EHR 0974	West	11/03/94	
Jack Griffin v. Dept. of Environment, Health, and Natural Resources	93 EHR 1030	Becton	03/21/94	
Wooten Oil Company v. EHNHR, Div of Environmental Management	94 EHR 0001	West	09/30/94	
John G. Owens & J.B.S. Mechanical Svcs, Inc. v. EHNHR, Env. Mgmt.	94 EHR 0024	Mann	09/07/94	
Land Resources				
Wallace B. Clayton, Dr. Marshall Redding v. Div. of Land Resources	93 EHR 1407	Morgan	08/09/94	
Town of Kernersville (LQS 93-053) v. Environment, Health, & Nat. Res.	93 EHR 1781	Chess	06/29/94	9:8 NCR 581
Royce Perry, Paul Perry v. Dept. of Environment, Health, & Natural Res.	94 EHR 0525	Gray	07/01/94	
Marine Fisheries				
Robert I. Swinson, Virginia S. Swinson v. EHNHR, Div/Marine Fisheries	93 EHR 0394	Gray	04/11/94	
Larry J. Batson v. Division of Marine Fisheries	93 EHR 0857	Morgan	07/22/94	
David W. Oglesby v. Division of Marine Fisheries	93 EHR 0930 ²	West	07/25/94	9:10 NCR 758
David E. Oglesby v. Division of Marine Fisheries	93 EHR 0931 ²	West	07/25/94	9:10 NCR 758
James Goodman v. EHNHR, Division of Marine Fisheries	94 EHR 0035	Nesnow	07/18/94	9:9 NCR 660
Billy Ervin Burton v. Division of Marine Fisheries	94 EHR 0504	Nesnow	09/01/94	
Maternal and Child Health				
WIC Section				
Anthony Awueah v. EHNHR, Div. Maternal & Child Health, WIC Section	94 EHR 0718	Chess	09/23/94	

* Consolidated Cases.

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<i>Solid Waste Management</i>				
Roger Sessoms v. EHNR/Asbestos Hazard Management Branch	93 EHR 0951	Gray	03/28/94	
Bertie Citizens Action Coalition, Inc.; Willard J. Oliver, Reginald Early, Herbert Jenkins, Jr., Lindwood Earl Tripp, Willie Warren Tripp, Mary Alice Cherry, and Kathy Burden v. EHNR, Solid Waste Management Division, and East Carolina Environmental, Inc., Addington Environmental, Inc., et al.	93 EHR 1045	Morrison	04/06/94	9:3 NCR 214
Bobby Benton v. EHNR & Division of Solid Waste	94 EHR 0442	Gray	08/22/94	
HUMAN RESOURCES				
Jerome Triplin v. Department of Human Resources	93 DHR 0108	Reilly	08/19/94	
Helen J. Walls, Walls Young World v. Department of Human Resources	93 DHR 0965	Morgan	08/11/94	
Brenda C. Robinson v. Department of Human Resources	94 DHR 0365	West	06/01/94	
Betty Rhodes v. Department of Human Resources	94 DHR 0501	Morrison	06/02/94	
<i>Distribution Child Support</i>				
Mona L. Stanback v. DHR, Div/Social Svcs, Child Support Enf. Section	93 DCS 0969	Morgan	08/02/94	
Jachell D. Parker v. Department of Human Resources	93 DCS 0371	Morgan	07/14/94	
Earleen G. Tinsley v. Department of Human Resources	94 DCS 0651	Nesnow	09/15/94	
<i>Division of Child Development</i>				
Judith Fridley v. Div. of Child Development/Abuse/Neglect Unit	93 DHR 0973	Morrison	03/08/94	
DHR, Division of Child Development v. Joyce Gale	93 DHR 1344	Gray	04/28/94	
Laureen Holt, ID#26-0-00037 v. DHR, Div. of Child Development	93 DHR 1549	Becton	07/13/94	
Gloria C. Haith v. Department of Human Resources	93 DHR 1707	Nesnow	03/22/94	
Gloria C. Haith v. Daycare Consultant	93 DHR 1787	Nesnow	03/14/94	
Charles E. Smith v. Department of Human Resources	93 DHR 1797	Nesnow	03/21/94	
Scott's Loving Day Care & Nursery, Mrs. Willie L. Scott v. DHR	94 DHR 0106	Nesnow	06/29/94	
Belinda K. Mitchell v. Human Resources, Div. of Child Development	94 DHR 0119	Reilly	06/30/94	
Living Word Day Care, Jonathan Lankford v. Dept. of Human Resources	94 DHR 0168	Nesnow	03/23/94	
David G. Whitted, Pres., Toddlers Academy, Inc. v. Div of Child Dev.	94 DHR 0453	Mann	09/23/94	
<i>Facility Services</i>				
Laurs Harvey Williams v. DHR, Division of Facility Services	93 DHR 0391	Morgan	08/11/94	
Presbyterian-Orthopaedic Hospital v. Department of Human Resources	93 DHR 0805	Reilly	03/11/94	
Judy Hoben Wallace v. Department of Human Resources	93 DHR 0935	Gray	05/23/94	
Lowell Stafford v. Department of Human Resources	93 DHR 1381	Gray	04/15/94	
Willie J. McCombs v. Human Resources, Div. of Facility Services	94 DHR 0430	Gray	09/29/94	
Mr. & Mrs. Alvin Wilson v. DHR, Division of Facility Services	94 DHR 0559	Chess	08/25/94	
<i>Certificate of Need Section</i>				
Charles E. Hunter, Jr., M.D. & Coastal Perfusion Svcs, Inc. v. Department of Human Resources, and Wilmington Perfusion Corp. and Howard F. Marks, Jr., M.D.	93 DHR 0746	Morgan	04/11/94	
Cape Fear Memorial Hospital v. Department of Human Resources	93 DHR 1552	Reilly	08/15/94	
Angel Community Hospital, Inc. v. DHR, Div. of Facility Svcs., Cert./ Need Section, and Brithaven, Inc., d/b/a Brithaven of Franklin	94 DHR 0146	West	10/21/94	
The Carrolton of Fayetteville, Inc. v. Department of Human Resources and	94 DHR 0197*	Morgan	08/11/94	
Highland House of Fayetteville, Inc. & Richard R. Allen Sr. v. DHR The Carrolton of Fayetteville, Inc. v. Department of Human Resources and	94 DHR 0198*	Morgan	08/11/94	
Highland House of Fayetteville, Inc. & Richard R. Allen Sr. v. DHR				
<i>Division of Medical Assistance</i>				
J.R., by and through her agent & Personal Rep., Hank Neal v. DHR	93 DHR 0528	Gray	04/27/94	
N.R. by & through her agt & personal rep E.C.J. v. DHR, Medical Assis.	93 DHR 0538	Chess	07/01/94	
David Yott v. Department of Human Resources	93 DHR 1113	Gray	04/05/94	
Sampson County Memorial Hospital v. DHR, Div of Medical Assistance	93 DHR 1760	West	09/07/94	
Division of Medical Assistance v. Catawba Cty Dept. of Social Services	93 DHR 1778	West	03/04/94	
Lu Ann Leidy, MD/Dorothea Dix Hosp. Child & Youth v. Medical Assis.	94 DHR 0448	Chess	06/21/94	

CONTESTED CASE DECISIONS

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<i>Division of Social Services</i>				
Evelyn Moore v. Department of Human Resources	94 DHR 0293	Reilly	04/15/94	
Nathaniel Harrell, Annie Harrell v. Department of Social Services	94 DHR 0440	Gray	06/27/94	
<i>Child Support Enforcement Section</i>				
Alfred Bennett v. Department of Human Resources	90 CSE 1146	Morgan	08/11/94	
Shelton Staples v. Department of Human Resources	91 CSE 0660	Morgan	08/11/94	
Helen Lee Harvell Jones v. Department of Human Resources	91 CSE 1183	Morgan	08/11/94	
Dalton Felton Sr. v. Department of Human Resources	92 CSE 0532	Morgan	07/13/94	
Colby S. Hughes v. Department of Human Resources	92 CSE 1199	Morgan	08/10/94	
Gary Eugene Honeycutt v. Department of Human Resources	92 CSE 1207	Morgan	08/10/94	
Vicki C. Conn v. Department of Human Resources	92 CSE 1268	Morgan	08/10/94	
John R. Lossiah v. Department of Human Resources	92 CSE 1345	Mann	10/13/94	
Melvin L. Miller Sr. v. Department of Human Resources	92 CSE 1372	Morgan	08/10/94	
Robert L. Hicks v. Department of Human Resources	92 CSE 1591	Morgan	08/10/94	
Thomas Sadler v. Department of Human Resources	92 CSE 1739	Becton	10/18/94	
Frederick C. Burdick Jr. v. Department of Human Resources	93 CSE 0227	Mann	11/09/94	
Darryl D. Leedy v. Department of Human Resources	93 CSE 0591	Morgan	08/11/94	
David M. Fogleman Jr. v. Department of Human Resources	93 CSE 1074	Mann	10/10/94	
William Heckstall v. Department of Human Resources	93 CSE 1077	Reilly	03/14/94	
Luther Hatcher v. Department of Human Resources	93 CSE 1082	Mann	05/24/94	
Bryan Jeffrey Cole v. Department of Human Resources	93 CSE 1091	Becton	03/30/94	
Anthony E. Bullard v. Department of Human Resources	93 CSE 1094	Nesnow	06/13/94	
Donald E. Height v. Department of Human Resources	93 CSE 1110	Morgan	08/11/94	
Dexter L. Chambers v. Department of Human Resources	93 CSE 1124	West	03/28/94	
Ronald E. Johnson v. Department of Human Resources	93 CSE 1125	Becton	03/30/94	
Roger Moore v. Department of Human Resources	93 CSE 1127	Becton	04/14/94	
Alvin Lee Martin v. Department of Human Resources	93 CSE 1128	Nesnow	04/04/94	
James J. Malloy v. Department of Human Resources	93 CSE 1132	Gray	10/03/94	
Robert Young v. Department of Human Resources	93 CSE 1133	Reilly	04/18/94	
Henry M. Dillard v. Department of Human Resources	93 CSE 1135	Nesnow	06/13/94	
Vernon Byrd v. Department of Human Resources	93 CSE 1136	Becton	08/22/94	
Antonio Townsend v. Department of Human Resources	93 CSE 1139	Becton	03/30/94	
Keith M. Gray v. Department of Human Resources	93 CSE 1140	Nesnow	06/28/94	
Troy E. Pinkney v. Department of Human Resources	93 CSE 1148	Mann	03/29/94	
Anthony A. Macon v. Department of Human Resources	93 CSE 1149	Gray	04/26/94	
Walter Lee Corbett v. Department of Human Resources	93 CSE 1150	Reilly	03/30/94	
Joseph E. Kernstine v. Department of Human Resources	93 CSE 1151	Morgan	07/15/94	
Alvin M. Davis v. Department of Human Resources	93 CSE 1152	Morgan	08/04/94	
Thomas M. Birdwell III v. Department of Human Resources	93 CSE 1155	Morgan	08/02/94	
Joe Louis Mayo v. Department of Human Resources	93 CSE 1161	West	04/19/94	
Bobby Lewis Smith v. Department of Human Resources	93 CSE 1162	Nesnow	06/16/94	
Lawrence D. Dean v. Department of Human Resources	93 CSE 1165	Gray	10/27/94	
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